

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA	*
	*
V	*
	*
CHRISTOPHER WILLIAMS	* CRIMINAL FILE NO. 13-50

SENTENCING
Tuesday, October 14, 2014
Burlington, Vermont

BEFORE:

THE HONORABLE CHRISTINA R. REISS
Chief District Judge

APPEARANCES:

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Attorney for the United States

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I N D E X

E X A M I N A T I O N

WITNESS NAME	PAGE	LINE
EDWIN BIGGS		
Direct by Mr. Drescher	11	24
Cross by Ms. Shelkrot	25	4
DANIEL MERCHAND		
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1 TUESDAY, OCTOBER 14, 2014

2 (The following was held in open court at 2:49 p.m.)

3 COURTROOM DEPUTY: Your Honor, the matter
4 before the Court is criminal case number 13-50, United
5 States of America versus Christopher Williams.
6 Representing the government is Assistant United States
7 Attorney Michael Drescher. And the defendant is present
8 today with his attorney, Lisa Shelkrot.

9 And we are here for sentencing.

10 THE COURT: Good afternoon.

11 MR. DRESCHER: Good afternoon.

12 MS. SHELKROT: Good afternoon, your Honor.

13 THE COURT: I have read your sentencing
14 memoranda and the presentence report, and let me make
15 sure that, Mr. Williams, you have read the presentence
16 report as well?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. Let me -- we have lots of
19 objections, and I don't know how much has been resolved,
20 if anything. So I am going to start with you, Miss
21 Shelkrot. And are there any challenges to the factual
22 section of the presentence report?

23 MS. SHELKROT: Yes, your Honor. As I have
24 identified in my sentencing memorandum, we challenge
25 specifically the assertion that Mr. Knowlton was working

1 for -- was working for my client. We challenge the
2 application of the firearm enhancement. And I guess
3 this isn't really a factual piece of it; we challenge
4 the organizational -- organizer or leader enhancement
5 for four points for an application as a specific factual
6 issue.

7 THE COURT: Okay. And have I covered all of
8 your factual guideline issues then?

9 MS. SHELKROT: I just want to make sure that I
10 am getting everything correct: gun enhancement, the
11 leadership enhancement, and the drug quantity based on
12 Mr. Knowlton -- oh, also we would object to the
13 assertion that Jennifer Garay was also working for my
14 client, or that she performed a transaction for him.
15 It's not a dispute that has any guideline relevance, I
16 don't think, one way or the other.

17 THE COURT: Well, in the supervisory role that
18 he has, if five or more participants; if you take out
19 Mr. Knowlton and Miss Garay, do we still have five or
20 more?

21 MS. SHELKROT: I think there are still.

22 THE COURT: Okay. Okay. And, Mr. Williams,
23 do you agree with your attorney's identification of
24 factual errors and guideline issues in the presentence
25 report?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. Let me turn to the
3 government. And you had a challenge to drug quantity.
4 And are you still maintaining that challenge?

5 MR. DRESCHER: Yes.

6 THE COURT: Okay. So any other challenges to
7 the presentence report from the government?

8 MR. DRESCHER: No.

9 THE COURT: Do you plan on putting on evidence
10 to prove up the drug quantity?

11 MR. DRESCHER: I do. I intend to call Edwin
12 Biggs.

13 THE COURT: Okay. And I hear, Miss Shelkrot,
14 you may have a witness as well?

15 MS. SHELKROT: Yes, just Detective Merchand.

16 THE COURT: Okay. All right. So the
17 government may call its first witness.

18 MS. SHELKROT: Your Honor, just before the
19 government does call the witness, I'd like to state an
20 objection to what I understand to be the basis for
21 calling Mr. Biggs, which is to testify as to quantities
22 that he supplied to my client.

23 The basis for the government's objection, as set
24 forth in the presentence report and in the comments to
25 probation and to myself at the time of the draft, were

1 based on a dispute with the weight of the average bags.

2 It turns out, as far as I can tell, based on
3 Mr. Biggs' statement to the grand jury, that the weights
4 that the state police uses and that the probation report
5 uses seems to be exactly what Mr. Biggs would have said
6 himself, but there wasn't any information given to
7 probation or to the defense at the time the draft was
8 prepared and no -- no factual dispute based on different
9 activity; only based on the weight of the drugs that
10 were being supplied.

11 THE COURT: Okay. So, Mr. Drescher, you made
12 this objection. I didn't see anything about
13 Mr. Biggs -- about that. So how do we get there from
14 the objection that you did raise?

15 MR. DRESCHER: So the objection is to the
16 quantity calculation. I made clear to the author of the
17 PSR and to defense counsel that should we not resolve
18 the question of quantity, the government intended to
19 call Mr. Biggs, who, everybody agrees, was Mr. Williams'
20 source of supply. I believe it is patent that if I am
21 calling the source of supply to the defendant, that the
22 topic of the testimony is going to be how much drugs
23 were supplied. Mr. Biggs --

24 THE COURT: Well, I am looking at your
25 objection, and it says, "This is based in part on their

1 position that the average bag weight of heroin should be
2 calculated at a higher level." So that's fine.

3 MR. DRESCHER: Sure.

4 THE COURT: What else is he going to say?

5 MR. DRESCHER: What else is how much heroin
6 passed through Mr. Williams into the people of Vermont.
7 The heroin that passed through Mr. Williams was supplied
8 by Mr. Biggs.

9 THE COURT: So why not raise that with the
10 probation officer so that you alert your -- the Court
11 and your opposing counsel that drug quantity is
12 contested on that basis?

13 MR. DRESCHER: So there's been -- there's been
14 no misunderstanding, I believe, that drug quantity was
15 being contested, that our -- if we were unable to
16 resolve the question of drug quantity, we intended to
17 call the defendant's source of supply.

18 THE COURT: Okay, so I'm looking at your --

19 MR. DRESCHER: If I -- if that was too
20 nuanced, I apologize. I thought I was being obvious in
21 making my objection that -- to get to the bottom --
22 assuming your Honor credits Mr. Biggs -- and I
23 understand you may or may not, but to get to the bottom
24 of how much quantity Mr. Williams should be responsible
25 for, the people who know that are Mr. Williams and

1 Mr. Williams' source of supply.

2 I tried to make clear to everybody that if we
3 couldn't resolve the issue, this is how I intended to
4 make the record at sentencing.

5 THE COURT: All right. So back to you, Miss
6 Shelkrot. In Mr. Drescher's sentencing memorandum, he
7 says, "The United States intends to present testimony at
8 Williams' sentencing to explain that the Court's
9 guideline analysis should incorporate a quantity in
10 excess of a kilogram. Witnesses may include Williams'
11 source of supply. With the presentation of this
12 testimony, the United States anticipates the hearing
13 could take two hours."

14 MS. SHELKROT: Yes. Your Honor, I don't
15 dispute that Mr. Drescher has had Edwin Biggs on the
16 witness list through the discovery period, and I don't
17 dispute that he said he might or would call Mr. Biggs as
18 a witness on quantity.

19 My concern is just what I raised to the Court and
20 what I think the Court zeroed in on, which is that the
21 nature of the objection that he raised was with respect
22 to the average bag weight. There's quite a bit of
23 e-mail traffic back and forth during the objection
24 period, which was actually sort of extended here. There
25 was -- because there was a whole complicated situation,

1 as the Court's aware, with the extensions of the
2 sentencing date.

3 Any way. That draft objection period lasted for a
4 while, and there was quite a bit of correspondence back
5 and forth among the three -- three parties here. And
6 from the government, it was all about specific lab
7 reports and the weight of particular bags that were
8 seized and calculated.

9 There was never discussion of whether there would
10 be testimony or evidence that there were additional bags
11 or additional sleeves that were carried, only as to the
12 average bag weight.

13 In fact, I can tell the Court, when I finally
14 received the Jencks material last week, I contacted
15 Mr. Drescher and said, "I don't understand why you are
16 putting him on. He says the bag weight is exactly what
17 probation said the bag weight was." And that was the
18 objection of which I had been put on notice and
19 probation had been put on notice.

20 THE COURT: Okay. So I am looking at the
21 presentence report. I didn't know that this was going
22 to come up. I did know it once I read your sentencing
23 memorandum. We have a process for you to raise an
24 objection, and you objected based on the bag weight, and
25 now it's on amount of supply.

1 MR. DRESCHER: The objection is to quantity,
2 and as the PSR notes, the objection was made, in part,
3 based on bag weight. I made it clear throughout the
4 objection process that if we can't resolve the quantity
5 issue, I would be calling Mr. Williams' source of
6 supply.

7 The issue is obviously quantity. Mr. Williams
8 knows who his source of supply is. There's no dispute
9 as to who his source of supply is. There's a question
10 as to how much he -- Mr. Biggs has supplied
11 Mr. Williams. Mr. Biggs, being the source of supply, is
12 going to be, you know, the witness best situated to
13 testify about this.

14 The fact that part of our ob- -- in an effort to
15 resolve the quantity question, I argued bag weight. I
16 was unable to persuade the author of the PSR that the
17 bag weight should be calculated at an amount as high as
18 I thought it should be.

19 So the PSR was very conservative in the estimation
20 of quantity, but I made clear that if we couldn't
21 resolve the issue of quantity, I intended to call the
22 source of supply. And I wasn't trying to be tricky. I
23 figured everybody would understand that if the question
24 was quantity, the source of supply would testify as to
25 how much quantity of drugs he had supplied the

1 defendant.

2 THE COURT: All right. I don't think this was
3 appropriately raised as an objection to the presentence
4 report in that when the presentence report said it was
5 to the weight of the bags, in part, impetus was on the
6 government to clarify, "No, I actually am going to
7 object" -- sit down for now -- "object to the total
8 source of drugs and the total amount of drugs."

9 On the other hand, it's raised clearly in the
10 government's sentencing memorandum. The defendant has
11 had that. We have had numerous extensions of
12 sentencing. There is no surprise and no prejudice.
13 There was ample opportunity to prepare for this, and if
14 you wanted a continuance, you could have let me know
15 ahead of time. So I am going to allow the testimony on
16 that point.

17 The government may call its first witness.

18 MR. DRESCHER: We call Mr. Biggs. I am not
19 sure if the marshals have him in the door or --

20 (Brief pause.)

21 EDWIN BIGGS,

22 having been duly sworn by the courtroom deputy,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. DRESCHER:

1 Q Good afternoon. How old are you, sir?

2 A 40.

3 Q Can you either lean into the microphone or speak up
4 a little bit.

5 How old are you, sir?

6 A 40.

7 Q And are you currently incarcerated?

8 A Yes.

9 Q And have you pleaded guilty in this court to a
10 heroin-related offense?

11 A Yes.

12 Q What have you pleaded guilty to?

13 A Conspiracy to distribute kilo of heroin.

14 Q And as part of your plea, did you also enter into
15 an agreement with the government?

16 A Yes.

17 Q And pursuant to that agreement, have you agreed to
18 cooperate with law enforcement?

19 A Yes.

20 Q Describe for the Court, please, what you understand
21 your obligations to be with regard to your agreement to
22 cooperate.

23 A Tell the truth.

24 Q Since you entered your plea of guilty in this
25 court, have you experienced any ramifications, any

1 implications as a result of your decision to cooperate?

2 A Be more specific by that.

3 Q Has anybody threatened you or done anything
4 untowards to you or your family with regard to your
5 decision to cooperate?

6 A Yes. I got into an altercation when I was in Ray
7 Brook correctional facility.

8 Q Has your family suffered at all as a result of your
9 decision to cooperate?

10 A Yes.

11 MS. SHELKROT: Objection to relevance.

12 THE COURT: Yes. What is the relevance here?

13 MS. SHELKROT: Unless there's a foundation
14 here.

15 MR. DRESCHER: I think the costs of
16 cooperation are a relevant consideration in assessing
17 the witness's decision to cooperate, his commitment to
18 go forward, his --

19 THE COURT: So I will do that at his
20 sentencing, although he may be in front of Judge
21 Sessions.

22 MR. DRESCHER: He is in front of Judge
23 Sessions.

24 THE COURT: All right.

25 MR. DRESCHER: I intend for this line of

1 inquiry to help the Court in assessing the witness's
2 credibility.

3 THE COURT: Okay. I will allow it. Go ahead.

4 BY MR. DRESCHER:

5 Q Has your family received any threats as a result of
6 your cooperation?

7 A Yes.

8 Q Where are you from?

9 A Brooklyn.

10 Q Is that where your family lives?

11 A Yeah.

12 Q What do you understand the maximum sentence could
13 be to the crime you have pleaded guilty to?

14 A Life.

15 Q And why have you decided to cooperate?

16 A Lesser time.

17 Q I'm sorry. Say that again.

18 A Part of my plea agreement, lesser time.

19 Q You are trying to reduce your sentence?

20 A Yes.

21 Q What is your -- do you have any felony
22 convictions in your criminal history?

23 A I got two prior felonies convictions.

24 Q Tell the Court what they are, please.

25 A One was for robbery in '98, and one was, I blew --

1 I went to trial on drug case and lost in '98.

2 Q The date of the robbery conviction was what?

3 A It was in '90.

4 Q '90? And how much time did you serve on your 1998
5 drug conviction?

6 A Almost 10 years.

7 Q When did you get out?

8 A October '07.

9 Q After you got out of prison in October of '07, how
10 long did it take before you began to sell heroin?

11 A Two, three months.

12 Q And since that time, how have you supported
13 yourself?

14 A Selling heroin.

15 Q Where did your heroin sales take place, generally?
16 What town or city?

17 A Brooklyn.

18 Q How many customers would you estimate you supplied
19 with heroin, approximately?

20 A That's a lot.

21 Q Let me ask you a different question. Is it correct
22 that there came a time when you came to understand that
23 the heroin you were distributing was making its way to
24 Vermont?

25 A Yes.

1 Q And what is your estimate as to how many persons
2 you distributed heroin to who were bringing the drug to
3 Vermont?

4 A About 30 something.

5 Q And did you have customers that were not bringing
6 the drug to Vermont?

7 A Yes.

8 Q So based upon your experience as a heroin dealer
9 with regard to the heroin that you supplied, what was
10 the approximate average weight per bag of heroin?

11 A The approximate -- you mean by one bag or you
12 talking about numerous bags?

13 Q How much would a sleeve weigh? How much heroin
14 would be in a sleeve?

15 A In a sleeve, I know like most -- I know like --
16 because I was -- like most time I don't sell just one.
17 I sold like -- and about 30 sleeves is about 90 grams.
18 Anywhere from 90 to a hundred grams.

19 Q And how many bags are in a sleeve?

20 A A hundred bags.

21 Q So just to make sure I understood you correctly, 30
22 sleeves would be 90 to a hundred grams?

23 A Yes.

24 Q And that's on average?

25 A Yes.

1 Q Sometimes less, sometimes more?

2 A (Witness nods head.)

3 Q You gotta speak up.

4 A Yes.

5 Q Was one of your customers known to you by the name
6 Lay?

7 A Yeah.

8 Q Do you see Lay in court today?

9 A Yes.

10 Q Could you point him out, please?

11 A Over there.

12 Q Could you identify him by what he looks like?

13 A Short, over there, wheelchair.

14 MR. DRESCHER: Could the record reflect,
15 your Honor, identification of the defendant?

16 THE COURT: The record so reflects.

17 BY MR. DRESCHER:

18 Q How do you know Lay?

19 A We're from the same neighborhood.

20 Q When do you remember first meeting Lay?

21 A Back in '97.

22 Q When you got out of prison?

23 A Yes.

24 Q Do you remember where you were living at that time?

25 A On Hancock and Malcolm X.

1 Q Do you remember where he was living at that time?

2 A On Gates.

3 Q Back in '97 -- let me take a step back.

4 And other than just living in the same
5 neighborhood, did you know him in any other way?

6 A I met him through him and a guy that I used to do
7 business with. They went to school together.

8 Q Was Lay a heroin customer of yours?

9 A When? '97, or you talking about now?

10 MS. SHELKROT: I didn't hear that.

11 BY MR. DRESCHER:

12 Q I'm sorry. What did you say, sir?

13 A You talking about '97 or you talking about now?

14 Q When did he -- in 1997, was he a heroin customer of
15 yours?

16 A No. None of us was.

17 Q Did he eventually become a customer of yours?

18 A Yes.

19 Q Approximately when did that start?

20 A In 2011.

21 Q Once Lay became a heroin customer of yours, how
22 often did you supply him with heroin?

23 A Like every two, three days.

24 Q And at the outset, how much heroin did you supply
25 him with?

1 A You talking about at the beginning?

2 Q At the beginning, yes.

3 A One to two sleeves.

4 Q One to two sleeves every two or three days; is that
5 right?

6 A Yes.

7 Q And then did the quantity change over time?

8 A Of course.

9 Q How did it change?

10 A 10, 15, 7, 8, 20. Depends.

11 Q When you say 10, 15, 7, 8, 20, what are you
12 referring to?

13 A Sleeves.

14 Q Did there come a time when you stopped supplying
15 him with heroin?

16 A Yes.

17 Q When was that?

18 A When he got locked up.

19 Q Do you know where he was locked up?

20 A He said he got pulled over and locked up in
21 Vermont.

22 Q And on that occasion, when he -- when you had
23 learned that he had been pulled over and got locked up
24 in Vermont, had you supplied him with heroin in the days
25 preceding that?

1 A Before or after he -- before he got locked up, yes.

2 Q And do you remember how much you supplied him
3 before he got locked up?

4 A Yes.

5 Q How much?

6 A Eight and eight.

7 Q Eight and eight, meaning what?

8 A Eight sleeves and eight sleeves.

9 Q So for a total of 16?

10 A Yes.

11 Q And before that last transaction of 16, for the
12 year before that, on average, how much heroin did you
13 supply Lay?

14 A Depends what he wanted. You know, like sometimes
15 he might come get 15, he might get seven, he might get
16 eight.

17 Q And this would be like every two to three days?

18 A Yes.

19 Q What is your estimate as to a weekly average? How
20 many sleeves of heroin did you supply Lay for the year
21 before you stopped dealing with him?

22 A Depends how business was going.

23 Q What was a typical week like for you in terms of
24 dealing with Lay?

25 A About 15.

1 Q 15?

2 A (Witness nods head.)

3 Q 15 sleeves?

4 A Yes.

5 Q A week?

6 A Yes.

7 Q So you said earlier that he would come every two to
8 three days. Would that be then about five sleeves a
9 day, or would it be 15 sleeves every two to three days?

10 A Sometimes like he might get seven, eight, nine.

11 Q What was a typical order?

12 A About 10.

13 MS. SHELKROT: Objection, your Honor. It
14 seems like this has been asked and answered.

15 THE COURT: It has been asked and answered,
16 and what is the Court going to do with "a typical order"
17 in terms of calculating drug quantity?

18 MR. DRESCHER: I don't think the witness has
19 been clear as to whether he is talking about a weekly or
20 per-purchase quantity. And I am trying to get at -- I
21 am trying to clarify the record in that regard.

22 THE COURT: All right. But if he is dealing
23 with what's typical and he repeatedly is testifying that
24 it depends on business, and sometimes it was seven,
25 eight, or nine, how is ascertaining what he means by

1 "typical," which he has already answered, going to drive
2 drug quantity?

3 MR. DRESCHER: I will try and rephrase the
4 questions, your Honor.

5 BY MR. DRESCHER:

6 Q So for that year before you stopped dealing with
7 Lay, what would a small purchase be?

8 A About five.

9 Q What would a large purchase be?

10 A About 15, 20.

11 Q And that's per occasion of him getting drugs from
12 you? That's per -- every two or three days?

13 A Yes.

14 Q How quickly after you started supplying him with
15 heroin in 2011 did he get up to these levels of
16 quantity?

17 A Probably about a month or two.

18 Q What sort of pricing did you charge him?

19 A 500.

20 Q 500 per sleeve?

21 A Yeah.

22 Q \$5 per bag?

23 A Yeah.

24 MR. DRESCHER: Your Honor, if I could just
25 have a moment?

1 THE COURT: You may.

2 (Brief pause.)

3 BY MR. DRESCHER:

4 Q Did you have any conversations with Lay in which
5 the topic was guns?

6 A Yes.

7 Q Tell the Court about that, please.

8 THE COURT: So how is this not outside the
9 scope of what you disclosed in the presentence report?

10 MR. DRESCHER: Well, it's -- there's a dispute
11 as to the gun enhancement. He is here. It's part of --
12 what I believe he is about to say was produced to Miss
13 Shelkrot as part of Jencks. If your Honor does not want
14 me to inquire as to --

15 THE COURT: Well, that's a fair argument. She
16 is challenging the gun enhancement, and she's put it at
17 issue, and you have your witness here, and we could have
18 you call your witness after she puts on her witness, but
19 I will allow it.

20 BY MR. DRESCHER:

21 Q Please tell the Court about conversation -- a
22 conversation or conversations you've had with Lay in
23 which the topic was guns.

24 A You know, one -- one thing I didn't do, I didn't
25 buy -- I never bought no guns off him or nobody coming

1 from there. I didn't want the extra the problems. It
2 was offered but I never bought none.

3 Q It was offered?

4 A It was offered but I never bought none.

5 Q Did you -- did Lay give you any indication as to
6 where he was getting what he was offering?

7 MS. SHELKROT: Objection. Objection.

8 THE COURT: Sustained.

9 BY MR. DRESCHER:

10 Q What was he offering?

11 THE COURT: So we haven't even established
12 that --

13 A Guns.

14 THE COURT: -- he was offering it. So he
15 said, "I -- it was offered but I never bought them." He
16 hasn't identified who offered anything.

17 BY MR. DRESCHER:

18 Q What was offered?

19 A Guns.

20 Q Who offered it?

21 A Lay.

22 Q And just to be clear, you declined the offer?

23 A I never bought none.

24 Q Meaning you never bought guns from Lay?

25 A No.

1 MR. DRESCHER: Nothing further.

2 THE COURT: All right. Any cross examination?

3 MS. SHELKROT: Yes, your Honor.

4 CROSS EXAMINATION

5 BY MS. SHELKROT:

6 Q Good afternoon, Mr. Biggs.

7 A How you doing?

8 Q My name is Lisa Shelkrot. You have a street name,
9 Mr. Biggs?

10 A Yes, I do.

11 Q What is that name?

12 A Money Boss.

13 Q Money Boss. Sometimes just "Boss"?

14 A Yeah.

15 Q Why did you have that street name?

16 A It's a name I picked up when I was a kid.

17 Q Would it be fair to say that you were the boss of
18 people that were coming up to Vermont with heroin?

19 A What you mean by -- what you mean by their "boss?"

20 Q What do I mean by their "boss"?

21 A Yeah.

22 Q Is it fair to say you were the person who was
23 supplying a very large number of people with heroin to
24 bring to Vermont?

25 A Yes.

1 Q They worked for you, right?

2 A They didn't work for me. They were buying work off
3 of me.

4 Q And what did they give you for that?

5 A Money.

6 Q And you kept that money?

7 A Yes.

8 Q You made your money off their work?

9 A Yes.

10 Q So you testified earlier that you had two prior
11 criminal convictions; am I right about that?

12 A Yes.

13 Q You actually had three, didn't you?

14 A Yeah. I meant I got two prior felonies; two bids I
15 did.

16 Q You have one second-degree robbery from 1990,
17 right?

18 A Yes.

19 Q You also had an attempted second-degree robbery,
20 correct?

21 A That's all one case.

22 Q They were sentenced at the same time, but two
23 different cases, right?

24 A I had one -- I had one felony for robbery, and I
25 did a three-and-a-half-to-seven, but I was on probation,

1 and they put the case together.

2 Q Would it refresh your recollection if I remind you
3 that you had a sentence of one-to-three for a
4 second-degree robbery, and then a second sentence of
5 three and a half to seven for an attempted robbery?

6 A Yes.

7 Q So that's two different convictions there, right?

8 A It supposed to be -- my recollection of sentencing,
9 they supposed to be a one -- it was a one to three for
10 one case and a two-and-a-half-to-five. Instead they
11 gave me a three-and-a-half-to-seven.

12 Q Have you seen a copy of your rap sheet before?

13 A I ain't seen it in a long time.

14 Q You seen it before, though?

15 A I would assume so, yes.

16 Q And by the way, what was the name you gave the
17 police when you were arrested on that first robbery?

18 A Um, my -- it should be Lance Marshall.

19 Q Actually Lance Marshall was the second robbery.
20 First robbery was Ray Jones. Remember that?

21 A Yes.

22 Q That's not your name, is it?

23 A No, it's not my name.

24 Q So that that was a lie, correct?

25 A Yes.

1 Q When you were arrested on the second robbery, that
2 was when you gave them the name Lance Marshall, right?

3 A Yes.

4 Q Also not your name?

5 A No. Lance is not my name. But Marshall's my
6 original name I was born with; Edwin Marshall.

7 Q Did you give 'em the name Lance Marshall so that
8 they could help find out who you really were?

9 A You say what?

10 Q When you were arrested and you gave the name Lance
11 Marshall, did you intend to make it possible for the
12 police to figure out who you really were?

13 A No.

14 Q You intended to try and escape from that, didn't
15 you?

16 A Yes.

17 Q And then your third conviction was your drug
18 conviction, right?

19 A Yes.

20 Q And that was for selling crack?

21 A Yes.

22 Q So you went to jail and -- I should say you
23 actually continued to sell crack all the way up through
24 your trial, didn't you?

25 A No.

1 Q No, you didn't do that?

2 A No, I did not.

3 Q Did you tell the agents that you continued to sell
4 crack all the way up through your trial?

5 A I didn't -- I never was rearrested for no crack or
6 nothing. No, I was not.

7 Q You went to trial on your crack case, correct?

8 A Yes, I did.

9 Q And I am not asking you whether you were
10 rearrested. I am just asking whether you continued to
11 sell crack throughout the time that you were waiting for
12 trial on your crack case?

13 A What you mean by "continue"?

14 Q I'm just asking, did you sell crack during the time
15 that you were waiting to go on trial?

16 A No, I did not, ma'am.

17 Q Do you remember telling the agents that you did?

18 A No.

19 Q So when you came out of jail for the robbery, that
20 was 1997?

21 A Yes.

22 Q And you started selling crack right away, right?

23 A I would assume, yes.

24 Q And by the time you came out, it was roughly 2007,
25 you said? October 2007?

1 A I went to jail in '98, and I came home in October
2 '07.

3 Q And when you first came home, you tried selling
4 crack again, didn't you?

5 A Yes.

6 Q But it turns out that by that point, heroin had
7 become more profitable, correct?

8 A Yes.

9 Q And so you switched your attention to heroin?

10 A Yes.

11 Q And you began selling heroin in January 2008,
12 right?

13 A Yes.

14 Q And continued right up through your arrest here in
15 Vermont in September of 2013, correct?

16 A What year you say?

17 Q September of 2013. A year ago.

18 A Yes.

19 Q Be fair to say that you professionalize in selling
20 heroin, right?

21 A Yes.

22 Q Those are your words, aren't they?

23 A Yes.

24 Q Now, you and your drug crews, you have used
25 violence to settle disputes, have you not?

1 A I never been convicted for nothing violent.

2 Q I didn't ask you whether you have been convicted.
3 I asked you whether you have used violence.

4 A Me *per se*? No --

5 Q Yes.

6 A No, I did not.

7 Q You personally never used violence?

8 A Never.

9 Q You didn't shoot somebody over a drug dispute in
10 1998?

11 A I shot somebody in '98 over a drug dispute?

12 Q You tell me.

13 A No, I did not.

14 Q Did you go out with a crew another time in 1998 and
15 chase somebody down until your gun jammed?

16 A You said in '98, I chase somebody down with a crew?

17 Q That's what I am asking you.

18 A No.

19 Q Did you try to kill a guy in 1998 but ran out of
20 bullets?

21 A Um, you mean shoot at somebody or tried to shoot at
22 somebody and never was? Yes.

23 Q So when I asked you a minute ago if you had used
24 violence to try and settle disputes, you said no, were
25 you not thinking about trying to shoot someone?

1 A No, you said with a crew. And '98, I didn't have
2 no crew or nothing like that.

3 Q So it was just you personally?

4 A Me and somebody else.

5 Q You and somebody else shooting at somebody to
6 settle a drug dispute?

7 A And it wasn't no drug dispute.

8 Q It was a different kind of a dispute.

9 A Yes.

10 Q What was that dispute about?

11 A Somebody was going to -- he said he was going to
12 rob me and all that.

13 Q And so you tried to shoot him?

14 A Trying to shoot somebody is busting a gun.

15 Q Excuse me?

16 A Trying to shoot somebody is like busting a gun,
17 ain't it? Shots being fired or something like that?
18 I'm asking.

19 Q About whether trying to shoot somebody is --

20 A No. I am saying, you saying trying to shoot
21 somebody; what do you mean by that? Be more specific.

22 Q Do you have an understanding of what it means to
23 try to shoot someone? You get a gun. It's loaded. And
24 you fire it. Is that trying to shoot somebody, as far
25 as you are concerned?

1 A Yes, that would be trying to shoot somebody. Yes.

2 Q And you did that to this guy that you were in a
3 dispute with?

4 A Yes.

5 Q When you were arrested in 2013, last year, you were
6 involved in some kind of a dispute with a different crew
7 over some robbery that they had been involved in, right?

8 A Yes.

9 Q That's Sheeny's crew?

10 A Yes.

11 Q And you directed that there be shootings of those
12 people, didn't you?

13 A I never did nothing. Nothing was ever done to
14 nobody.

15 Q Did you direct that somebody else retaliate against
16 the people who had robbed you?

17 A That was -- you know, like, people was talking but
18 nothing never was done.

19 Q Okay. I am not asking whether you were successful
20 in it. I am asking whether you actually directed that
21 violence against somebody else.

22 A Just words.

23 Q Just words. You just told 'em to do it; you don't
24 know if they did it or not?

25 A Nobody never did nothing.

1 Q You did tell them though, right? You did try to
2 arrange for that violence?

3 A It was just talk. Nothing never was done.

4 Q Did you beat somebody who badmouthed you?

5 A What you mean by that?

6 Q What do I mean by "beat" or what do I mean by
7 "badmouthed"?

8 A You said did I beat somebody that badmouthed me?

9 Q Yeah.

10 A I hit somebody before.

11 Q I'm sorry?

12 A I hit somebody before.

13 Q Did you tell the agents in this case that you once
14 beat someone up because he had been running his mouth
15 about you?

16 A Punched somebody one time.

17 Q Knocked him out?

18 A Yes.

19 Q Did you tell the agents that you had directed
20 shootings of this crew that you were in a dispute with
21 back in 2013?

22 A You said -- never was no shooting.

23 Q I understand that. Did you tell the agents that
24 you directed that there be shootings?

25 A What you -- you mean like -- that I sent somebody

1 over to shoot somebody?

2 Q Yeah.

3 A No, nobody ever shot nobody over there, not coming
4 from me.

5 Q Have you threatened cooperators in the past?

6 A What you mean by that? Threatened who?

7 Q You know what a cooperator is, right? Somebody who
8 does what you're doing.

9 A Yes.

10 Q And have you threatened them in the past?

11 A The only -- only -- only situation I have had
12 before when I hit somebody in the mouth, and that was
13 it.

14 Q Did you have an Instagram account, Mr. Biggs?

15 A I had two Instagram accounts before.

16 Q Two Instagram accounts? Did you ever use your
17 Instagram accounts to talk about rats and -- and what
18 rats would have done to them?

19 A Yes.

20 Q You know what -- what did you mean by a rat?

21 A It's a picture on Instagram I put -- my son had a
22 doll or something, Chuck E. Cheese doll.

23 Q It was a big rat?

24 A The picture's a little doll, like this
25 (indicating).

1 MS. SHELKROT: The Court will indulge me for a
2 minute?

3 THE COURT: So we can see it, and you
4 should -- we'll identify this as Defendant's Exhibit --

5 MS. SHELKROT: I didn't put stickers on
6 anything, but I wasn't intending to introduce it
7 necessarily.

8 THE COURT: Well, it's on the screen, so it is
9 being introduced.

10 MS. SHELKROT: Fair enough. I will hand label
11 it for the moment --

12 THE COURT: That's fine.

13 MS. SHELKROT: -- so we can keep track of it
14 then.

15 THE COURT: Okay. And it's Defendant's
16 Exhibit A?

17 MS. SHELKROT: Defendant's Exhibit A.

18 THE COURT: Okay.

19 BY MS. SHELKROT:

20 Q Is that a picture from your Instagram account, Mr.
21 Biggs? There's actually a screen right behind you, if
22 that helps you.

23 That's from your Instagram account, right?

24 A Yes. It look like the Chuck E. Cheese doll.

25 Q And the date on that -- if you look right

1 underneath the picture -- it's 9/7/2013; do you see
2 that?

3 MR. DRESCHER: Excuse me, I -- from what's on
4 the screen, we can't see what she's referring to.

5 MS. SHELKROT: Oh, sorry.

6 THE WITNESS: You can't see the --

7 MS. SHELKROT: Sure enough.

8 BY MS. SHELKROT:

9 Q Do you see that two lines under the picture,
10 there's a -- it says "taken 23-9-7"?

11 A Yes.

12 Q So that's just a few days before your arrest here
13 in Vermont, correct?

14 A Yes.

15 Q And then you see the very bottom line here it says
16 "caption," right? You see that, where it says
17 "caption"?

18 A Yes.

19 Q And then you actually have to turn to the next page
20 as it printed out to see your caption here. You see
21 three lines down there's text with your caption?

22 A Yes.

23 Q This is your Money Boss account, right? At -- on
24 Instagram?

25 A Yes.

1 Q You wrote, "Niggas like this, I don't like
2 disloyal -- disloyal. Fake. Do anything to get out of
3 jail. Willing to lie to cut a deal." You wrote that,
4 right?

5 A Yes, I did write that.

6 Q That very last few words here, do you see where I
7 am pointing, "DMT don't do rats"? You see that?

8 A Yes.

9 Q What does DMT stand for?

10 A That was the murder team.

11 Q The "da murder team"? That was your team?

12 A It was a group of people I was hanging with.

13 Q That you called yourselves "da murder team"?

14 A (Witness nods head.)

15 THE COURT: So we did get an answer to that?

16 THE WITNESS: I told -- yes.

17 THE COURT: Okay.

18 BY MS. SHELKROT:

19 Q So you have pled guilty to dealing -- or to a
20 conspiracy to distribute in excess of one kilo of
21 heroin, correct?

22 A Yes.

23 Q Now, you testified before -- Mr. Drescher asked you
24 how much a sleeve weighed, and you couldn't really say
25 how much one sleeve weighed, but you said 30 sleeves is

1 90 to a hundred grams, right?

2 A Yes.

3 Q So you can just do the math and say 300 sleeves is
4 900 to a thousand grams, right?

5 A Yes.

6 Q So 300 or maybe a little bit more sleeves is a
7 kilo; fair to say?

8 A Somewhere around there, yes.

9 Q Somewhere around there. So back in 2008, when you
10 first started selling heroin, you started getting two
11 sleeves at a time, right?

12 A Yes.

13 Q And you said you pretty quickly moved up to getting
14 10 sleeves at a time, right?

15 A Yes.

16 Q And you sold those 10 sleeves in about a week?

17 A Yes.

18 Q So that's right -- you were selling 500 sleeves, a
19 little more than 500 sleeves a year back in 2008, right?

20 A Yes.

21 Q So you're selling over a kilo a year way back in
22 2008, right?

23 A Yes.

24 Q And you have only been dealing bigger and bigger
25 quantities since then, right?

1 A Yes.

2 Q So fair to say that pleading guilty to distributing
3 a kilo doesn't even begin to touch what you've
4 distributed?

5 A Yes.

6 Q That a kilo is a pretty insignificant quantity, as
7 far as you have been concerned?

8 A As far as I was concerned?

9 Q As far as you are concerned. As far as your own
10 activity is concerned, a kilo is not terribly
11 significant, is it?

12 A I say it is.

13 Q You'd say it is? How long did it take you to sell
14 a kilo in 2013? How long did it take you to sell 300
15 bags in 2013? Oh, sorry. 300 sleeves.

16 A How much it take 300 sleeves?

17 Q Yeah.

18 A Could take about -- some -- like two weeks.

19 Q So as of 2013, you were selling about a kilo every
20 two weeks, right?

21 A Yes.

22 Q In fact, you told Detective Merchand, when you were
23 arrested, that if you were released, you could go out
24 and get 150 sleeves just in one shot, right?

25 A Yes, I could.

1 Q That would have been easy for you to do?

2 A Yes, it would've.

3 Q And ever since 2009, you have been getting at least
4 a 50-50 split on everything you sold.

5 A Yes.

6 Q And by the way, you apparently were also continuing
7 to sell crack in some quantity through this time,
8 correct?

9 A What do you mean by -- what do you mean by that?

10 Q What do I mean by crack?

11 A No. You said selling with it? What you mean by
12 that? You want specific.

13 Q Well, you don't use crack, do you?

14 A No, I don't.

15 Q Have you ever used crack?

16 A No.

17 Q Okay. When you were arrested in Vermont, you
18 were -- you had 17 grams of crack with you. Correct?

19 A That was -- that's -- yes. In my case is 17 grams
20 of crack, yes.

21 Q And you were continuing to buy crack in the years
22 before your 2013 arrest, right?

23 A What you saying?

24 Q I asked if you were continuing to buy crack during
25 the years before your 2013 arrest.

1 A Yes, I was -- yeah.

2 Q And that wasn't for your own use -- right? --
3 because you don't use crack.

4 A No.

5 Q It was for sale.

6 A Yes.

7 Q So you were continuing to sell crack during the
8 years before your 2013 arrest.

9 A Yes.

10 Q But that was just a sideline, right? Not your
11 primary -- not your primary product.

12 A No.

13 Q And I should point out that you weren't even
14 charged with the 17 grams of crack that you were
15 arrested with here in Vermont, were you?

16 A No, I was not.

17 Q Has anybody even talked to you about those 17 grams
18 of crack?

19 A When I -- it said in my paperwork, it's in there.

20 Q I beg your pardon?

21 A In my paperwork.

22 Q In your paperwork, in the affidavit, in the
23 complaint affidavit, they mention it, right?

24 A Yes.

25 Q But no one's ever talked about charging you with

1 that?

2 A No, I'm not too sure about that.

3 Q Are you expecting to be charged with conspiring to
4 distribute the 17 grams of crack or any other crack?

5 A I don't know.

6 Q So fair to say that in the summer of 2013, in the
7 months before you were arrested, you were pretty much on
8 top of the world, right?

9 A I was doing all right for myself.

10 Q You had stacks and stacks of cash, right?

11 A Yes.

12 Q You had fancy jewelry?

13 A Yes.

14 Q You had fancy cars?

15 A Yes.

16 Q You had the Bentley, right?

17 A I never had a Bentley before.

18 Q You never had a Bentley?

19 A No, I have not.

20 Q Did you tell the agents you had a Bentley?

21 A Somebody in my family had a Bentley and I was
22 riding around in it. It was my nephew's car. I never
23 had a Bentley.

24 Q Did you buy it?

25 A No, I did not buy it.

1 Q Did you give your nephew the money for it?

2 A I never gave nobody no money for no Bentley.

3 Q Okay. So you didn't tell the agents that you
4 bought a Bentley?

5 A I never bought a Bentley. I was riding around in
6 my nephew's car. I let him hold my S550 that I had, and
7 he let me hold his Bentley.

8 Q My question is whether you told the agents that you
9 had it.

10 A I was driving around in it, yes.

11 Q You bought yourself an Infiniti?

12 A Yes.

13 Q You bought yourself a Cadillac SUV?

14 A I had a Cadillac before, yes.

15 Q You bought yourself an Audi?

16 A I had an Audi truck before, yes.

17 Q There was a BMW that you bought also?

18 A I never had a BMW before.

19 Q Am I missing any of the fancy cars? Am I
20 forgetting any of them?

21 A What you mean by -- like, um, I had S550 before. I
22 had a few Escalades before, yes.

23 Q And all that lifestyle was funded through heroin
24 sales.

25 A Yes.

1 Q Now, you stopped dealing with my client,
2 Christopher Williams, when he was first arrested in
3 February 2013, right?

4 A Yes.

5 Q Because you were worried that maybe he was
6 cooperating?

7 A Um, yes.

8 Q So I take it, then, that you stopping dealing with
9 him didn't put a dent in your lifestyle?

10 A Yes.

11 Q Yes, I'm right. Didn't put a dent in your
12 lifestyle, right?

13 A You know, it hurt a little, but I couldn't risk it.

14 Q You were -- you had the stacks of cash all through
15 the summer of 2013, right? Stacks of cash, the cars,
16 the girls, the champagne; that continued all through
17 summer of 2013, didn't it?

18 A Somewhat, yes.

19 Q "Somewhat," did you say?

20 A Yes.

21 Q If I'd go back through your Instagram accounts and
22 show you the pictures, it's going to be picture after
23 picture of you with stacks of cash and the champagne and
24 the girls and the cars and all that all through the
25 summer of 2013, right?

1 A Somewhat, yes.

2 Q Just as much as ever; isn't that true?

3 A Not much as ever, as before, no.

4 Q You testified in the grand jury, didn't you?

5 A Yes.

6 Q And you named your biggest customer, correct?

7 A Yes, I did.

8 Q Not Mr. Williams, was it?

9 A No.

10 Q We're talking about your biggest customer in
11 Vermont, right, when you spoke to the grand jury?

12 A Yes.

13 Q Because you had customers also going to Long
14 Island, right?

15 A Yes.

16 Q You also had customers distributing in
17 Pennsylvania?

18 A Yes.

19 Q You have customers distributing in Connecticut?

20 A Yes.

21 Q But when you testified in the grand jury, you were
22 just talking about your biggest customer in Vermont,
23 right?

24 A Yes.

25 Q Okay. Now, it's a little tricky for me because my

1 copy of it is redacted. I have got a bunch of blanks
2 where you actually gave names, so I am not asking you
3 the names because I don't need to know them, but I do
4 need to count them up, okay?

5 So you tell them your biggest customer, and then
6 you named two pretty big customers, right? Do you
7 remember that? Do you remember your grand jury
8 testimony?

9 A Yes. I said yes.

10 Q Okay. And those other two pretty big customers of
11 yours were also not Mr. Williams, right?

12 A No.

13 Q And then you named, looks like, at least two other
14 people that would be also in the big group; not
15 Mr. Williams.

16 A Yes.

17 Q So you had at least, it looks like, five customers
18 in Vermont bigger than Mr. Williams. Correct?

19 A Somewhere around there, yes.

20 Q You actually were never asked about Mr. Williams in
21 the grand jury, were you?

22 A No.

23 Q Because he really just wasn't one of the big fish
24 as far as you were concerned.

25 MR. DRESCHER: Objection. There's no

1 foundation that the witness would know that.

2 THE COURT: I'll allow it.

3 BY MS. SHELKROT:

4 Q He wasn't one of the big customers as far as you
5 were concerned?

6 A The question was, I remember correctly, ask me who
7 my biggest customers, and I told them who it was.

8 Q And Mr. Williams' name never came up?

9 A He wasn't one or two; no, he was not.

10 Q He wasn't one, two, three, four or five, was he?

11 A He wasn't one or two, no.

12 Q Or three or four or five.

13 A No.

14 Q Now, fair to say that by 2011, you were not
15 fronting any heroin to anybody, were you?

16 A In 2011?

17 Q Yeah.

18 A Did I ever front anything to somebody?

19 Q Yeah.

20 A Yes, I did.

21 Q Were you fronting any heroin to Mr. Williams?

22 A When -- you know, like he come, I give him some.
23 He pay for some and then I front him some.

24 Q How much of the heroin that you were supplying for
25 the Vermont market were you fronting?

1 A Depends on the individual.

2 Q How much of the heroin that you supplied to Mr.
3 Williams were you fronting?

4 A If -- if he -- depends what he come to get.

5 Q I beg your pardon?

6 A Depends what he was coming to purchase.

7 Q Depends what he was coming to purchase?

8 A Yes.

9 Q Well -- so you testified earlier that people just
10 bought from you.

11 A Yeah, that's in some cases. Not every -- not --
12 like some people come and buy straight. That like --
13 it's just like any kind of business. You know the
14 people that you dealing with. Some people that you can
15 give to and you could front and you not afraid they
16 bring the money back, and some people don't.

17 Q So what was your take when you were fronting heroin
18 to people?

19 A What was my take? Sometimes like -- say like -- if
20 a dude's a friend, somebody I could trust, I'd give it
21 to 'em. And when he come back, I'd get my money.

22 Q I can't hear you. I didn't hear the last part.

23 A Say like -- say like someone -- the person I was
24 getting it from, right, they give it to me. I am
25 responsible for it. So, you know, like -- say like it

1 depends on the individual that's coming to get it,
2 depends if I could trust 'em or not.

3 Q Yeah. And so my question was, what was your take?
4 When somebody would come and you would front them
5 heroin, how much did you let them keep? How much of the
6 profits did you let them keep?

7 A You mean from -- this what -- like -- so like -- so
8 like if he was coming from me and getting it, and you
9 came -- say like you -- say like you wanted 15 and you
10 have money for 10, all right. So when you finished, you
11 gotta give me my money down, the ones that I charged you
12 for.

13 Q Yeah. And when I came back with the money for the
14 rest of it, how much of it do I get to keep?

15 A All you got to do is -- all you gotta -- say
16 like -- say like I charge you \$500, right, for each one,
17 and I gave you 10. So that mean you owe me for five.
18 You owe me -- you owe me \$2400. That's what I get.

19 Q You are saying the rest of the sale price, whatever
20 they sold, they would get to keep?

21 A That's their money.

22 Q So going back to my question about fronting. It's
23 your testimony now that you were still fronting people
24 heroin as late as 2011?

25 A In 2011? Not a lot of people, but a few people

1 here and there. Depends on whether I could trust 'em or
2 not.

3 Q Were you fronting people in 2012?

4 A Yes.

5 Q Your biggest customers?

6 A The biggest customers -- most of the time the
7 biggest customers, you know, like -- they got their
8 money.

9 Q Did you -- did you keep any written records of how
10 much you were supplying to people?

11 A No.

12 Q How did you keep track of what somebody owed you if
13 you were fronting them?

14 A Sometimes instance I remember or sometimes I would
15 put it in my phone or something like that.

16 Q So you said you think you were supplying about 30
17 people in Vermont; is that right?

18 A Yes.

19 Q And what's that number based on? Have you just
20 gone through and sort of tried to think of everybody you
21 can remember?

22 A No. In my line -- in my line of business stuff I
23 was doing, I knew like -- I knew the people I was
24 dealing. I know how many I was dealing with.

25 Q And how many people were you supplying? How many

1 customers did you have for the Long Island market?

2 A Depends. It depends what year you talking about.

3 Q Let's talk about 2012 and 2013, up until your
4 arrest. Say the last 18 months before your arrest.

5 A Long Island? Probably about two or three. Not a
6 lot.

7 Q And what about Pennsylvania?

8 A It's about two or three.

9 Q And you don't have any written records of what you
10 were supplying to any of those people?

11 A Not written down, no.

12 Q Did the government ever ask you for any of your
13 records for any of that?

14 A No.

15 Q So anything that you can say about quantities is
16 just off the top of your head?

17 A My memory, yes.

18 Q Mr. Drescher asked you earlier about whether you
19 had suffered any consequences as a result of your
20 cooperation with the government. I just want to be
21 clear: You don't have any information any of that had
22 to do with my client, do you?

23 A No.

24 Q He didn't have anything to do with that.

25 A No.

1 Q And, in fact, you don't have any information about
2 any violence by Mr. Williams at all, do you?

3 A What you mean? Towards me?

4 Q Towards anybody. You have any information about
5 any violent behavior that he has been involved in?

6 A No.

7 Q And you say that he once offered you a gun, right?

8 A Offered, yes.

9 Q He tell you that he had one?

10 A He tried to -- it was a business proposal, but I
11 never bought nothing off him.

12 Q You never saw him with a gun?

13 A No.

14 Q And he never told you that he had one, did he?

15 A He what?

16 Q He never told you that he had one, did he?

17 A Yes, he did.

18 Q But you never saw it?

19 A Never.

20 Q You never saw any evidence that he had one?

21 A No.

22 Q You had your own guns though, right?

23 A Yes.

24 Q So it's not like you were turning him down because
25 you weren't interested in guns.

1 A No. I turned him down because I was -- I didn't
2 want -- I didn't want to deal with these people like in
3 drugs and then involve guns because I was scared of the
4 consequences.

5 Q The legal consequences?

6 A Yes.

7 MS. SHELKROT: If I could just have a moment,
8 your Honor?

9 THE COURT: Yes.

10 (Brief pause.)

11 MS. SHELKROT: That's all I have.

12 THE COURT: All right. Any redirect?

13 MR. DRESCHER: No.

14 THE COURT: All right. Thank you, sir. You
15 may step down.

16 (Witness excused.)

17 THE COURT: Any further witnesses for the
18 government?

19 MR. DRESCHER: No, your Honor.

20 THE COURT: Any witnesses for the defendant?

21 MS. SHELKROT: I need to think for a second
22 about whether I need to call Detective Merchand. If I
23 can just take a couple minutes and look at my notes and
24 see what, if anything, I need from him, your Honor?

25 THE COURT: Okay.

1 (Brief pause.)

2 MS. SHELKROT: Yes, I do need to call
3 Detective Merchand, please.

4 THE COURT: All right. You may do so.

5 DANIEL MERCHAND,
6 having been duly sworn by the courtroom deputy,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. SHELKROT:

10 Q Good afternoon.

11 A Good afternoon.

12 Q All right. Detective Merchand, you were one of the
13 case agents who worked with Mr. Williams, correct?

14 A Correct.

15 Q And you got involved soon after he was arrested in
16 the southern Vermont, as I recall?

17 A Yes.

18 Q And Mr. Williams began talking to you about some of
19 the facts of the case when you were at the -- at
20 Fletcher Allen with him waiting for a -- a warrant to be
21 executed, correct?

22 A Correct.

23 Q At that time he didn't have counsel, correct?

24 I'm sorry. You know what? That's actually not
25 true.

1 A He did have counsel.

2 Q By the time you got to the hospital, he did have
3 counsel.

4 A Correct.

5 Q By in any event, he began talking to you and
6 indicating that he wanted to cooperate and give you
7 information?

8 A Correct.

9 Q And he did give you some information there at the
10 hospital?

11 A He did.

12 Q Once he was returned from the hospital, we then
13 have a formal proffer session, correct?

14 A Correct.

15 Q You were there. I was there. Mr. Williams was
16 there.

17 A Yes.

18 Q And I think it was AUSA Nolan, if I am not
19 mistaken?

20 A Correct. Yes.

21 Q And Mr. Williams spoke with you for several hours
22 at that point, did he not?

23 A He did.

24 Q And he discussed with you his drug-related
25 activities in Vermont?

1 A He did.

2 Q And that -- what he told you at that point was
3 consistent with other information that you had, wasn't
4 it?

5 A Yes.

6 Q It corroborated other information and, in turn, was
7 corroborated by other information you had?

8 A Yes.

9 Q And he identified his primary source of supply as
10 Edwin Biggs?

11 A Not by name, but yes.

12 Q He called him Boss?

13 A Correct.

14 Q And at that point you guys hadn't arrested
15 Mr. Biggs yet, right?

16 A No, we had not.

17 Q He also told you about Boss's organization, right?

18 A Yes.

19 Q He gave you the names of a number of other people
20 who worked for Boss?

21 A Yes.

22 Q And he indicated his willingness to cooperate
23 against Boss?

24 A Yes.

25 Q Included in the names, the people he gave you, was

1 Jahkim Brewer?

2 A Yes.

3 Q That was the individual who later was arrested with
4 Boss? Mr. Biggs.

5 A Yes.

6 Q And you considered his information reliable, didn't
7 you?

8 A For the most part, yes.

9 Q Mr. Williams allowed you to search his cell phones?

10 A Yes.

11 Q And he gave you his passwords for that purpose,
12 right?

13 A Yes, he did.

14 Q And that allowed you to do an immediate dump of all
15 of the material on the cell phone?

16 A Correct.

17 Q And that saved you the time of getting a warrant
18 and also sending them back to the manufacturer to have
19 them decrypt it, all of that?

20 A Yes.

21 Q You were then present either at or shortly after
22 his arrest in June of 2013, right?

23 A Down in New York City?

24 Q Yes.

25 A Yes.

1 Q He had been indicted at that point, right?

2 A I thought we dismissed the complaint that had
3 originally been filed. I don't remember -- oh, you mean
4 when he was arrested?

5 Q When he was arrested back in June.

6 A I thought you meant the other meeting. Yes.

7 Q When he we arrested back in June.

8 A Yes.

9 Q And he told you at that time he was no longer able
10 to deal with Boss because Boss had stopped dealing with
11 him back in February?

12 A Yes.

13 Q Which is consistent with what Mr. Biggs said today?

14 A Yes.

15 Q He also told you that he had been shot at by
16 somebody from Boss's car?

17 A He did, yes.

18 Q But he gave you more information about Jahkim
19 Brewer?

20 A Yes.

21 Q And that information, I think in combination with
22 the information that he gave to you --

23 A Yes.

24 Q -- in February, you actually used in connection
25 with your request for a warrant associated with

1 Mr. Brewer's case. Does that ring a bell at all?

2 A I'm not positive on that one. I would have to look
3 at some reports. There were several reports in this
4 case.

5 Q I will help.

6 A And I had a few meetings with Mr. Williams.

7 Q I will help.

8 MR. DRESCHER: If I may, your Honor: I don't
9 want to get in the way of anything that's going to be
10 pertinent to one of the sentencing issues, but at the
11 moment I'm not -- it's not clear to me -- perhaps it's
12 clear to the Court or Miss Shelkrot -- as to where we
13 are going relative to issues at sentencing.

14 Basically it's a relevance -- if not an objection,
15 a relevance concern; call it an objection. I want to
16 make sure we're focusing our attention on something
17 pertinent here.

18 THE COURT: So it sounds to me like you are
19 making an argument for substantial assistance that
20 doesn't qualify for a motion, and that doesn't seem to
21 be a sentencing argument that you flagged for this
22 witness. So where are we going with this?

23 MS. SHELKROT: Well, I don't know whether I
24 need to flag it for the witness, your Honor, but it
25 certainly goes to history and characteristics of the

1 defendant under 3553(a) and acceptance of responsibility
2 and the degree to which he has attempted to make amends
3 and -- and move his life on a more productive track. I
4 think that is all highly relevant.

5 THE COURT: Well, it might be relevant, but it
6 wasn't an issue even raised in the sentencing
7 memorandum, that I recall; that sometimes people flag
8 the issue and say, Even though there is no 5K1.1 motion,
9 we're still thinking that some credit should be given
10 for substantial assistance.

11 But let me ask if Mr. Drescher objects to this line
12 of questioning?

13 MR. DRESCHER: No. The Court should have
14 whatever information is appropriate for -- under 3553(a)
15 or otherwise. I may stand up in a moment and object,
16 but I don't want to get in the way of the sentencing
17 presentation. I just want to express some concern, that
18 I have done, and I'll sit down.

19 MS. SHELKROT: Your Honor, I should actually
20 be really explicit. The very particular reason I didn't
21 put it in the sentencing memorandum is because I am
22 aware of the Court's concern about flagging cooperation
23 issues in documents that are publicly filed. And there
24 was a very deliberate choice not to address that in that
25 sentencing memorandum precisely because of that issue.

1 THE COURT: So that is a complicating factor,
2 but when I was giving Mr. Drescher a hard time for not
3 accurately flagging the issues that he was going to call
4 Mr. Biggs to testify, I didn't expect what's good for
5 the goose is good for the gander, and I thought
6 Detective Merchand would either be filling in the blanks
7 of Mr. Biggs' testimony -- yes, he said all these things
8 to the agent -- or talking about Mr. Knowlton or Miss
9 Garay or the application of the firearm enhancement.

10 There is no objection to you eliciting this
11 information, but it wasn't, from the Court's
12 perspective, disclosed as an issue before Court.

13 MS. SHELKROT: And I would agree.

14 THE COURT: All right. So go ahead.

15 MS. SHELKROT: May I approach, your Honor?

16 THE COURT: Yes.

17 BY MS. SHELKROT:

18 Q Detective Merchand, I have just handed you a copy
19 of an application -- or an affidavit in support of an
20 application for a search warrant on the Instagram
21 account with user names jahmoneysp and moneyboss718.
22 Were those Mr. Biggs' and Mr. Brewer's Instagram
23 accounts?

24 A Yes.

25 THE COURT: So we will mark this as

1 Defendant's Exhibit B for the record.

2 BY MS. SHELKROT:

3 Q And if you turn to pages three -- the bottom of
4 page three and page four, you cite a source, an unnamed
5 source, that you have interviewed?

6 A Yes.

7 Q And that source was Mr. Williams, wasn't it?

8 A Yes.

9 Q So you considered Mr. Williams' information to you
10 sufficiently reliable to include it in an application
11 for a search warrant?

12 A That and I wanted to keep him anonymous because of
13 the person he was providing the information about.

14 Q Sure. Now, you also took statements from
15 Mr. Biggs, correct?

16 A Yes.

17 Q You were present during -- present during his
18 proffer and his interviews by law enforcement?

19 A Yes.

20 Q Do you recall Mr. Biggs telling you that he tried
21 to kill a guy in 1998 but ran out of bullets before he
22 could do that?

23 A I remember him talking about running down the
24 street shooting at somebody. I went -- myself and
25 another agent went through his previous bad acts.

1 Q And, you know, I have to say, from the redacted
2 statements I have, it's not perfectly clear but it
3 appears to be that there were at least two different
4 shooting incidents that he was personally involved in;
5 is that your recollection?

6 A Yes, I think there was a second one where he said
7 the gun jammed when he tried to shoot someone.

8 Q And there was also the incident I asked him about
9 in 2013 when he directed that some people be shot?

10 A That one I'm a little confused on because there --
11 there was a robbery that took place down in Brooklyn
12 over a -- in the area of the 79th precinct, and he was
13 shot at and robbed, and then there was some people that
14 had talked about retribution for that, and I don't
15 recall if he was directing anyone in that instance or if
16 it was some people that he was affiliated with that were
17 upset that he got shot at and they wanted to go back at
18 him -- back at those guys.

19 Q Well, as I say, I only have redacted copies of the
20 statements, so I actually don't know the answer for
21 certain. But I will provide it to you and you can tell
22 me if you can tell from the context what that answer is.
23 Okay?

24 A Okay.

25 MS. SHELKROT: So let me just find the right

1 statement.

2 All right. May I approach, your Honor?

3 THE COURT: You may.

4 BY MS. SHELKROT:

5 Q I am bringing you a copy of an FBI investigation
6 dated 9/11/2013.

7 THE COURT: We will mark this as Defendant's
8 Exhibit C.

9 MS. SHELKROT: Give me just a moment.

10 (Brief pause.)

11 BY MS. SHELKROT:

12 Q If you turn to page four of that report.

13 "Mr. Biggs said that he is currently in an ongoing beef
14 with blank, who robbed Biggs for \$50,000 in cash, drugs
15 and jewelry." And you continue down a little bit. It
16 says, "For retaliation, Biggs has used some crew to
17 shoot some other crew."

18 A Like I had just said, I believe this was some
19 people that were affiliated with Mr. Biggs that were
20 unhappy with what had transpired. I don't recall him
21 saying he directed them to go back at 'em. It was kind
22 of like, He went at our guys so we need to go at them.

23 This is Agent Grubisic's report, who is with the
24 New York FBI, and I was -- and it was him and I
25 interviewing him at that point. It was after his arrest

1 that evening -- or the following morning, I should say.
2 I don't recall him directing 'em.

3 MS. SHELKROT: Your Honor, I am a little
4 hamstrung because I don't have the --

5 MR. DRESCHER: Your Honor, I am looking, in an
6 effort to try and clarify whatever it is Miss Shelkrot
7 is trying to get at here. I do not have the unredacted
8 report with me. I guess I would object in a sense that
9 I am not sure where this line of inquiry is going. Miss
10 Shelkrot obviously cross examined Mr. Biggs at length
11 about various statements. I believe Mr. Biggs, you
12 know, admitted lots of stuff to her.

13 If it's an effort to impeach Mr. Biggs by proving
14 up a prior inconsistent statement, where the rules of
15 evidence applicable, she could certainly do that. It's
16 clear Mr. Biggs talked about this episode during one of
17 his interviews, but with regard to the overall issue at
18 here, whether this is going to incrementally -- in a
19 significant way incrementally help the Court assess
20 Mr. Biggs' credibility, I am not sure it does, and I
21 guess I would object on that basis.

22 THE COURT: So Mr. Biggs testified that he
23 never used violence, and Miss Shelkrot's questions were
24 framed in the form of, Did you tell the agents that you
25 did X? Did you tell the agent that you did Y?

1 Mr. Biggs sometimes said he did, sometimes said he
2 didn't. And now she's trying to elicit from
3 Mr. Merchand the other side of the story, and she may do
4 so.

5 You may continue.

6 MS. SHELKROT: And having said that,
7 your Honor, I am not sure I can really very -- I can't
8 do anything until I get the unredacted version of that.
9 Maybe at some point we can take just a minute and
10 Mr. Drescher could have somebody grab it from his
11 office.

12 MR. DRESCHER: If I may: So this is a report
13 of somebody other than Detective Merchand, but of an
14 interview where Detective Merchand was present. Maybe I
15 have lost track of where we are going here, but I
16 believe Detective Merchand testified as to, you know,
17 what he recalled from this part of the conversation, but
18 perhaps the unredacted report would help.

19 MS. SHELKROT: I can ask that question.

20 THE COURT: So let me just say that Detective
21 Merchand has already testified that Mr. Biggs told him
22 that he twice shot at other individuals. The Court can
23 draw a reasonable conclusion that that's a use of
24 violence. If you want to go through other statements,
25 you may do so, but I don't see why we would need to get

1 an unredacted statement when we have that acknowledgment
2 from Detective Merchand. You can decide on that point.

3 MS. SHELKROT: That's all I have then. Thank
4 you.

5 THE COURT: Any cross examination -- redirect?

6 MR. DRESCHER: No.

7 THE COURT: All right. Thank you. You may
8 step down.

9 THE WITNESS: Thank you, your Honor.

10 (Witness excused.)

11 THE COURT: Any further witnesses for the
12 defendant?

13 MS. SHELKROT: No, your Honor.

14 THE COURT: All right. At this point, we will
15 have argument on the existing issues, including the
16 factual challenges, the guideline issues and 3553(a)
17 factors, and what I am going to do is I will start with
18 Miss Shelkrot on all issues, ask Mr. Williams if he
19 wants to make a statement on his own behalf, turn to
20 Mr. Drescher for arguments on all issues, then ask Miss
21 Shelkrot if she wants to make a brief response. I will
22 rule on the factual issues and make a factual
23 determination, do a guideline calculation, analyze the
24 3553(a) factors, and impose the sentence, and notify the
25 parties of their rights of appeal.

1 Any problem with proceeding in that fashion?

2 MR. DRESCHER: No.

3 THE COURT: So no -- any problem, Miss
4 Shelkrot?

5 MS. SHELKROT: No. The only question I raise
6 is whether Mr. Drescher intends to introduce any
7 documentary evidence?

8 MR. DRESCHER: I do not.

9 MS. SHELKROT: Okay. So no, no question -- no
10 problems with that.

11 THE COURT: All right.

12 MS. SHELKROT: So, your Honor, with respect to
13 the guideline issues first -- sorry. Trying to organize
14 myself here while I am talking. I can't do two things
15 at once.

16 With respect to the guideline issues, your Honor,
17 as I noted earlier, the government originally raised the
18 issue of the bag weight and I believe has withdrawn that
19 issue because it appears that Mr. Biggs' testimony was
20 perfectly consistent with the bag weight used by the
21 probation department. So assuming that that's no longer
22 an issue, I am not going to spend any time on that.

23 The government now is relying on Mr. Biggs', I
24 would say, less-than-clear testimony about how much he
25 was actually supplying to Mr. Williams over a period of

1 time.

2 First of all, there's nothing to corroborate
3 Mr. Biggs' testimony. The government has interviewed, I
4 would say, probably dozens of witnesses associated with
5 this conspiracy and provided those statements to the
6 probation department, and there's nothing whatsoever to
7 indicate that Mr. Williams was moving over a kilo of
8 heroin. There's simply -- that statement isn't borne
9 out, and there's nothing that corroborates Mr. Biggs'
10 estimates.

11 Mr. Biggs, by his own estimate, says that there
12 were roughly 30 people, 30-something -- I guess that
13 could be closer to 40 than 30, but 30-something
14 customers who he was supplying in Vermont alone, and
15 Mr. Williams wasn't one of the biggest of them. He
16 wasn't in the biggest five. Nobody asked how far down
17 the list he was, but it certainly wasn't one of the top
18 movers.

19 There's no good reason to think that Mr. Biggs has
20 an accurate recollection of how much Mr. Williams was
21 actually moving. Mr. Biggs essentially admitted as much
22 and he was not able to give any kind of very specific
23 information. We know that it was quantities of sleeves,
24 hundreds at a time, and we have no dispute with that.
25 That was certainly true.

1 I think Mr. Biggs' own motivation to be dishonest
2 is evident to the Court. He has a significant history
3 of dishonesty both with his criminal record -- and he
4 himself has stated to the -- stated to the world that
5 somebody who is cooperating has an incentive to lie.
6 That's something that he made clear in his own Instagram
7 post just days before his own arrest in this case that a
8 rat will do anything to get themselves out of trouble.
9 I submit to the Court that that's perfectly obvious that
10 that's Mr. Biggs' motivation here.

11 I spent as much time as I did on Mr. Biggs' own
12 conduct because Mr. Biggs has quite a lot of trouble to
13 get out of, considering the scale and scope of his own
14 criminal activity.

15 Putting aside guideline issues for the moment, I
16 would want to turn to the -- the other aspect of this
17 case that I think is -- really ought to be more primary
18 in the Court's mind when the Court's sentencing
19 Mr. Williams, which is his own personal history and
20 characteristics and the 3553(a) factors.

21 Mr. Williams has, in some very challenging
22 circumstances, presented to this Court as somebody who
23 is unusually able and willing under a very difficult set
24 of circumstances to accept the Court's direction, abide
25 by conditions of release, and attempt to change his

1 behavior for the better.

2 Mr. Williams appeared in court here in Vermont from
3 Brooklyn I count at least three times: First when he
4 was arrested and arraigned in June. He was released
5 from court in New York and sent up here, and he came on
6 his own and showed up in Vermont. He was here in
7 Rutland at the suppression hearing. He was here in
8 Burlington for the change of plea.

9 He, as the Court may know, made some fairly
10 extraordinary efforts to comply with the Court's
11 directive in August that he self-surrender to serve his
12 sentence. I won't go into the details of that because
13 that was a mess.

14 THE COURT: So let me talk to you about that
15 mess --

16 MS. SHELKROT: Sure.

17 THE COURT: -- because I think I made some
18 extraordinary efforts to make sure that Mr. Williams was
19 not inconvenienced. And the problem with this case --
20 all cases present their own problems -- is I agree that
21 any sentence of imprisonment will be much more difficult
22 for Mr. Williams than somebody who doesn't have his
23 challenges.

24 On the other hand, I have somebody who's driving
25 and doesn't seem to have any difficulty getting up to

1 Vermont and conducting a fairly brisk heroin business.
2 And he knows, because he has been to jail before,
3 that -- you know, not for a long time, but he has a
4 record -- that if he goes to jail, he is going to go in
5 that wheelchair, and it's going to be much more
6 difficult for him than anybody else.

7 So how do I -- how do I balance those factors?

8 MS. SHELKROT: Your Honor, as a factual
9 matter, I don't think he has ever spent more than 24
10 hours in jail before this instance. He'd never been
11 more than arrested and released. That said, there's no
12 question --

13 THE COURT: Okay. He is in criminal history
14 category three, and -- and I do recall that he has had
15 mostly suspended sentences and time served. I guess --
16 I am looking at -- the attempted robbery was two and a
17 half years of imprisonment?

18 MS. SHELKROT: That's the sentence on which he
19 was just arrested in August.

20 THE COURT: Okay. All right. And then before
21 that, one day of confinement. Okay.

22 MS. SHELKROT: I'm pretty sure I'm not
23 misspeaking on that.

24 THE COURT: I can't really tell because
25 there's two time-served sentences, so I don't know if

1 that's any time or not, but I remember your
2 representation that he served very little time in jail.

3 Let's put it this way then: He knows that the
4 possibility of jail is there, and yet he embraced this
5 tremendous risk.

6 MS. SHELKROT: That's certainly right. And,
7 your Honor, I would not posit that his being in a
8 wheelchair thoroughly excuses all conduct. I don't
9 think he would say that either. What it will
10 unquestionably do is make his time in jail significantly
11 more difficult. And it is true that that is a risk that
12 was -- that was there at the outset.

13 Again, that's -- it's always true that the risk of
14 jail is there and present when somebody commits a crime.
15 I don't think that without having served any time in
16 jail he could have fully appreciated exactly the
17 challenges -- the extra challenges that that would have
18 imposed upon him.

19 This isn't the kind of case where somebody hits a
20 criminal history category three and they have had months
21 here or a year somewhere else or even weeks. He will
22 face a five-year mandatory minimum sentence here, which
23 is a significant sentence by any stretch of the
24 imagination, without having served any time in jail
25 before. That's just how it is. The time that he has

1 been in since his arrest in August on the New York
2 attempted-robbery case is the longest time he has ever
3 spent in jail.

4 So it is true his wheelchair and his incapacity did
5 not prevent him from engaging in criminal activity. You
6 know, that's obvious or else we wouldn't be here. And I
7 don't mean to suggest that a sentence of incarceration
8 or more than the minimum term is unnecessary because he
9 is incapable of carrying on any kind of activity, but
10 what I do think is that he has demonstrated to the Court
11 that he has the capacity to the contrary to change. He
12 has the capacity to abide by the Court's rules and
13 requirements. He has demonstrated a significant desire
14 to do what the Court wants in this case and has done so
15 at some -- some significant hardship and inconvenience
16 to himself. And I think that that has -- that speaks
17 well to his ability to adapt and change for the better.

18 It speaks to the amount of incarceration that is
19 necessary in order to achieve a future deterrent effect.
20 He has gotten the message at this point, and in every
21 way that he has been able to since his arrest here,
22 shown -- or since his original indictment, shown the
23 Court that he desires to comply with the court's and our
24 society's rules.

25 This is not a situation where he has been back on

1 violations of conditions of release. To the contrary,
2 he has appeared for, as far as I know, every single drug
3 test. He has been tested clean at every single drug
4 test despite the fact he had been a daily marijuana user
5 prior to his arrest, and that's a significant
6 achievement, and it's, as the Court knows, something
7 that we don't see all the time in these cases,
8 particularly where somebody does live far away.

9 It's certainly been my experience that people who
10 are out of state can have kind of a hands-off attitude
11 towards their case. It can feel a little bit unreal.
12 It's happening up here in Vermont. They live hundreds
13 of miles away. It's not part of the daily fabric of
14 things. It's been my experience in many cases that
15 people don't attend to their criminal cases and don't
16 take them seriously because they're happening way up
17 here in Vermont as opposed to in Brooklyn where the
18 person's living their life.

19 That has not been the case for Mr. Williams. He
20 has stayed actively engaged and focused on what the
21 Court wants him to do.

22 I had also asked -- and this isn't explicitly a
23 sentencing issue but it is something the Court will need
24 to decide. I have asked the Court to address the issue
25 of concurrent versus consecutive time for his New York

1 case. Again, I would point out that the fact that he
2 has not served time before means that he will serve, for
3 this, his first incarcerative sentence, a very lengthy
4 term of imprisonment no matter what. The very least he
5 can possibly serve is five years from today, and that is
6 a very, very lengthy sentence by any stretch of the
7 imagination.

8 Mr. Williams was a mid-level manager here. No
9 question that he directed other people, but he was not
10 the engine of this machine. This machine continued on
11 long after he was done with it. He wasn't even one of
12 the biggest players of Mr. Biggs, let alone wasn't --
13 wasn't the boss.

14 So this is just not a situation, as Mr. Drescher
15 says, where there are few people more responsible for
16 distribution of heroin in Chittenden County than
17 Mr. Williams.

18 We have the guy who is most responsible for heroin
19 distribution in Chittenden County who just came and
20 testified, and he told us that there are, sounds like,
21 close to half a dozen people he can think of right off
22 the top of his head who are more responsible than
23 Mr. Williams.

24 It's not appropriate to -- and not necessary, in
25 this case, to treat him as somebody who is a -- a major

1 director of criminal activity and somebody who poses a
2 major recidivist risk.

3 So would ask the Court to sentence him to the
4 mandatory minimum of five years and to impose it
5 concurrent with the time he is serving on his state
6 case.

7 THE COURT: What about your specific guideline
8 challenges? I didn't hear anything about the firearm
9 enhancement. I did -- I do take it that you think that
10 he should not receive the same level of enhancement as
11 Mr. Biggs for his role in the offense, and I didn't see
12 any basis for the Court to discount the testimony of Mr.
13 Knowlton and Miss Garay that they, in fact, worked with
14 the defendant.

15 MS. SHELKROT: Your Honor, Mr. -- Mr. Williams
16 himself can address those issues. The government has
17 chosen not to present any of those witnesses here, for
18 whatever reasons, either Mr. Knowlton or Ms. Garay or --
19 I'm having a moment with the third one. Knowlton, Garay
20 or Heffernan.

21 The testimony that Heffernan -- Miss Heffernan
22 provided, that is apparently being used to support the
23 firearm enhancement, is very vague. It doesn't provide
24 any detail. It seems to have been -- she seems to have
25 been the only one who gave any kind of information like

1 that, despite, again, quite a number of people.

2 THE COURT: Well, she's not that vague. She
3 says -- "Heffernan stated Williams showed her a gun in
4 his belt on two occasions while he was in Vermont. She
5 has described it as a black pistol, possibly a nine
6 millimeter. She added that the defendant referred to it
7 as his protection and his body guard."

8 MS. SHELKROT: Correct. That is -- that
9 testimony is not consistent with what other witnesses
10 have said, who -- apparently none of the others have
11 said that they have ever seen him with a gun. Miss
12 Heffernan was involved for a very brief period with
13 Mr. Williams, really just the end of no -- end of 2011,
14 and then she moved on afterwards.

15 I think if Miss Heffernan had actually been here,
16 there would have been significant questions raised about
17 her own credibility and her truthfulness with the Court
18 in general.

19 THE COURT: But you could have called her.

20 MS. SHELKROT: That's correct.

21 THE COURT: Okay.

22 MS. SHELKROT: That's correct, your Honor.

23 And Mr. Williams is quite emphatic that he had not
24 engaged in drug activity involving Ms. Garay. There has
25 been no -- no documentary evidence submitted to

1 corroborate that.

2 Mr. Williams' phones were taken; his -- again, not
3 just in February but also in June. Presumably the
4 government went through those phones and looked for any
5 evidence that would corroborate that. There hasn't been
6 any documentary evidence to -- or record evidence to
7 corroborate that transaction allegedly involving Ms.
8 Garay.

9 THE COURT: Anything else before I turn to
10 Mr. Williams?

11 MS. SHELKROT: I don't think so, your Honor.

12 THE COURT: All right. Mr. Williams, did you
13 want to make a statement on your own behalf?

14 THE DEFENDANT: Yes.

15 First, I want to state I apologize to the state of
16 Vermont, and I take full responsibility to what I did in
17 my behavior, my negative behavior, and I made a bad
18 choice in my life. And I understand the punishment for
19 the -- for the bad behavior. And I just want to just
20 get this time over with so I can change my life, do
21 something better, get out and be a better man because I
22 got a family, my mother.

23 And I just go through a lot. I have lived through
24 a lot in my life that this -- this was a bad choice that
25 I made, and I apologize. I apologize to you. I

1 apologize to Michael Drescher, Dan Merchand and his
2 team, the marshals, my lawyer, my family, and I would
3 never do nothing like this again. And I am not an
4 addict. I just made bad choices in my life. I just
5 want to change.

6 THE COURT: All right. That's good to hear.
7 Thank you.

8 Mr. Drescher?

9 MR. DRESCHER: With regard to Mr. Biggs'
10 testimony, Miss Shelkrot indicated she thought there was
11 no corroboration. I would take issue with that in a
12 sense that -- on several levels.

13 First the PSR itself concludes, based upon culling
14 of data from different independent sources, that
15 Mr. Williams was responsible for distributing around
16 20,000 bags of heroin.

17 Obviously when we're taking information from
18 different -- different data points involved in the
19 conspiracy, we're necessarily going to have an
20 incomplete picture.

21 Even before Mr. Biggs gets on the stand, we have
22 six -- more than 600 grams of heroin accounted for in
23 the PSR, and to suggest that Mr. Biggs' testimony is not
24 corroborated, it fails to recognize the fact that
25 multiple sources of information placed thousands of bags

1 in Mr. Williams' conduct in this conspiracy.

2 With regard to the specifics of his testimony, he
3 said for the last year a low end -- a light purchase
4 would be about five sleeves, a high purchase would be
5 about 15 sleeves. He estimated about an average of 15 a
6 week.

7 Call it -- or 15 -- 15 sleeves a week over the
8 course of the year before his February arrest. Call a
9 week 500 -- or call a year 50 weeks for ease of
10 calculation. 15 sleeves over 50 weeks is 750 sleeves.
11 That's well in excess of a kilogram.

12 And I should add -- and so I think there's more
13 than ample evidentiary record in the form of Mr. Biggs'
14 testimony to supply the Court with a record that
15 would -- which would justify and support a guideline
16 finding of more than a kilogram.

17 I think it's unfortunate that we were in a position
18 where we were contesting quantity at all. Miss Shelkrot
19 has tried to suggest that Mr. Williams has had some sort
20 of extraordinary acceptance of responsibility, and I
21 would suggest that that is simply not the case. A PSR
22 that very conservatively estimates a guideline quantity
23 of 600-some-odd grams of heroin, Mr. Williams took issue
24 with. Mr. Williams said he shouldn't be held to be
25 responsible for more than a hundred to 400 grams of

1 heroin. Somebody who accepts responsibility is going to
2 acknowledge the extent of his -- of his role in
3 distributing heroin in Vermont.

4 In addition, as your Honor pointed out, Miss
5 Shelkrot could have called Miss Garay today. Miss Garay
6 was -- testified under oath and repeatedly about what
7 she did on Mr. Williams' behalf in March of 2013.

8 In March of 2013, Mr. Williams had already been
9 arrested, had already spent a night or two or three in
10 custody here in Vermont before the initial charges
11 against him were dismissed. Mr. Williams continued to
12 use his skill managing others in the distribution of
13 heroin even after he had been arrested in Vermont
14 initially. This is not somebody who is easily deterred,
15 is not somebody who is accepting responsibility.

16 THE COURT: But you are not asking that he
17 doesn't get acceptance of responsibility?

18 MR. DRESCHER: Under the guidelines, no. He
19 should get the three-points credit under the guidelines.
20 But in the -- in the overall -- in the overall
21 sentencing scene, 3553(a) history and characteristics of
22 Mr. Williams, I think that the Court should very much
23 discount and discredit any suggestion that he is here
24 today accepting responsibility for the full scope of his
25 conduct. Somebody who accepts responsibility does not

1 take unreasonable positions with regard to the
2 quantity -- their quantity admissions.

3 As I say in my -- in the sentencing memo -- I
4 should take another step back.

5 Miss Shelkrot's -- part of her arguments were that
6 he should get special credit for showing up at -- at
7 suppression hearings or showing up to change his plea.
8 I think that's -- that doesn't add up. That's not a
9 reason to mitigate somebody's sentence simply because
10 somebody appears in court, and I hope the Court rejects
11 that argument.

12 You know, until the warrant on his 2004 property
13 crime that he pleaded guilty to in 2006, was arrested
14 earlier this year, it is true that the PSR indicates
15 that he hasn't spent a whole lot of time in custody, and
16 I think the fairest inference of that is that this is a
17 man who has skirted the law despite several convictions,
18 and having skirted the law, was undeterred about
19 continuing to sell significant amounts of heroin, both
20 personally and by organizing other people in Vermont to
21 do so, and -- and to the extent we credit Miss
22 Shelkrot's argument that, hey, she hasn't been -- he
23 hasn't been -- he hasn't spent a lot of time in custody,
24 therefore he shouldn't get a lot more time in custody, I
25 think the converse of that is it takes a significant

1 period of time in custody to send the signal that
2 somebody who conspires to distribute very large
3 quantities of heroin needs to be deterred, and it takes
4 a long period of time for him to be deterred.

5 And finally, the fact that Mr. Biggs had other
6 customers -- Mr. Biggs sold, by any measure, I believe,
7 and by his admission today, massive quantities of
8 heroin. And when --

9 THE COURT: So why is he pleading to a kilo?

10 MR. DRESCHER: He is pleading to a kilogram
11 for purposes of the 841(a)(1) count. I am not sure
12 there's a greater quantity he can plead to for -- under
13 the Controlled Substance Act. That's the largest
14 mandatory minimum threshold. It would be -- it would be
15 immaterial from an offense perspective for him to plead
16 to 50 kilograms of heroin if one kilo is the threshold
17 there under 841(a)(1).

18 THE COURT: But often the government agrees to
19 a drug quantity with somebody, and it sounds like a kilo
20 is the tip of the iceberg, by his own admission.

21 MR. DRESCHER: Absolutely. Absolutely. But
22 your Honor's question was, Well, why did he plead to a
23 kilo? There's not a larger quantity that he can plead
24 to for purposes of triggering a mandatory minimum. And,
25 you know, by his own count, he was selling a kilo at

1 least every two weeks.

2 Now -- and to that -- to that point, the fact that
3 he has other customers that were buying larger volumes
4 than Mr. Williams, well, hopefully those other customers
5 will have their day in court as well. But he did say
6 that when Mr. Williams got taken off, yeah, it hurt a
7 little, and it hurt a little because even though he was
8 selling massive quantities of heroin, Mr. Williams was
9 buying a sig- -- enough of that heroin for it to hurt
10 when he -- when that demand was taken away.

11 Ultimately, you know, the quantity issue, I felt
12 like our hand was sort of forced to put that evidence on
13 because Mr. Williams would not acknowledge the full
14 extent of the amount of heroin he sold in this state.
15 So we put it on and --

16 THE COURT: But the presentence report reached
17 a conclusion. Probation officer took a relatively
18 conservative approach, and then you contested it. So we
19 can't -- we can't put that on Mr. Williams. You said,
20 No, you got it wrong. Even though there hasn't been
21 many quantities seized and we have controlled buys, I
22 want you to find a higher amount.

23 So how is that Miss Shelkrot's fault?

24 MR. DRESCHER: It's -- her sen- -- in
25 considering Mr. Williams' characteristics, it -- he

1 should -- he would be entitled to sentencing credit, I
2 believe, if he -- if he recognized the full scope of the
3 crime that he pleaded guilty to. He pleaded to a
4 hundred grams. A hundred grams is 30 sleeves or so, and
5 that's a small fraction of what he is responsible for.
6 And the fact that he put the government to its proof,
7 which is his right, also indicates that he is not
8 prepared to acknowledge the full extent of his conduct.

9 Now, it's a guideline issue. That's why we put the
10 quantity on. On the one hand, it's a guideline issue,
11 and I think the Court should find it's more than a kilo
12 and the guideline should go up four points as a result.
13 But it's also very much a 3553(a) issue for the reasons
14 I have touched on, to show the nature of his crime, to
15 contrast it with the limited extent of his admissions.

16 THE COURT: So let me ask you -- because part
17 of the sentencing, by your agreement, is a two-level
18 departure for anticipated changes to the drug quantity
19 table. Correct?

20 MR. DRESCHER: Correct. And so your question
21 is --

22 THE COURT: Well, my question is --

23 MR. DRESCHER -- what should it come out at?

24 THE COURT: -- is -- I can understand what the
25 math works out to, but the argument is, you know, he

1 needs to fess up to a larger quantity of drugs but, by
2 the way, we agreed that the drug quantity table is too
3 high and we know that the Sentencing Commission is going
4 to amend it, and so we want you to go down two levels,
5 kind of on the same basis.

6 MR. DRESCHER: Oh, down two -- well, look. If
7 we were all in agreement, let's say hypothetically 600
8 grams was right -- we are not in agreement on that, but
9 if that were at -- we would say the guidelines today net
10 out as the PSR indicates, and then we would agree to a
11 two-point variance to account for that because the
12 guidelines are finally catching up to what the practice
13 of the courts in Vermont have been for several years.

14 I am not suggesting the courts -- now they have
15 caught up, there's no reasons why these courts should
16 stay ahead of the guidelines in that regard. But in --
17 but four points -- whatever the Court nets out, four
18 points should be added as a guideline calculation.

19 Now, if you look at the sentencing memo I
20 submitted, my argument in the end is that a sentence of
21 not less than 108 months is appropriate to send the
22 right signal here. You add the four points of -- you
23 add the four points of quantity here, that would be a
24 non-guideline sentence. That would be a variance below
25 where the guidelines would net out.

1 You know, if we add four points, his sentence is --
2 is very, very large. And I am not suggesting the Court
3 has to impose a guideline sentence even with the kilo to
4 satisfy all of the balancing factors when it comes to
5 sentencing, but I would strongly urge the Court to send
6 a signal to Mr. Williams, to other people tempted to
7 sell heroin in Vermont, in recognition of Mr. Heroin --
8 Mr. Williams' involving many, many people, both New
9 Yorkers who were not addicted, giving them money to come
10 up here, and then exploiting the desperate, cheap labor
11 of the work force that is the heroin-addicted community
12 up here, he got it right. And maybe he got it right
13 because he doesn't have the physical capabilities of
14 others. That is the only way he could do it.

15 And it suggests that this is a man that has a lot
16 of potential to do other stuff and to work with people
17 and to manage people. Unfortunately, he used those
18 skills to sell very large quantities of a drug that has
19 been the scourge on this state for several years now.

20 He didn't live in this state. He just came up here
21 to spread the poison and take the money out of it. And
22 the right sentence the Court should impose in this case
23 should be not less than 108 months.

24 Now, with regard to the question of whether
25 your Honor should impose a sentence that your Honor

1 orders be run concurrent or consecutive to the
2 two-and-a-half-year sentence that he's serving right
3 now, I would only suggest that there is no connection
4 between these crimes. The sentence he is serving now,
5 he's serving because he, for whatever reason, never
6 reported to be sentenced after he pleaded guilty in
7 2006.

8 The suggestion that he be -- that he receive a
9 concurrent sentence on this federal charge to that state
10 charge is akin to having two crimes for the price of
11 one.

12 THE COURT: Well, but the problem is, as you
13 know, if it runs consecutive, he has to serve that
14 entire sentence, and then the sentence starts, and it
15 takes him way up beyond what you are asking. So there
16 is no easy way to deal with it. It's either there's no
17 consequence, when you run it concurrent, or there's a
18 huge consequence when you run it consecutive, and that's
19 just the way it works.

20 MR. DRESCHER: It's -- it's the way it works.
21 It's a variable your Honor has obviously already
22 considered. I would urge the Court, in imposing -- in
23 imposing its sentence, that it not let Mr. Williams get
24 two crimes for the price of one.

25 The crime he committed back in New York in 2004, to

1 which he pleaded in 2006, involves working with other
2 people to rob -- to steal the property of -- I believe
3 it was taxi drivers and the like. It was a property
4 crime of a person with a criminal proclivity. And he
5 didn't see justice in that case until only recently.

6 That he didn't see justice in that case has kept
7 him on the course to where he is today having sold very
8 large quantities and having -- having inflicted the
9 damage of those quantities of heroin on the state of
10 Vermont.

11 So we ask your Honor impose a sentence of not less
12 than 108 months. We ask that it be deemed concurrent to
13 his current state charge.

14 THE COURT: Let me ask you about two things
15 that Miss Shelkrot raised that I haven't heard from you
16 about, and one is substantial assistance. There isn't
17 going to be a motion in this case, but it remains true
18 that Agent Merchand testified that he used information
19 from Mr. Williams to obtain a search warrant, and that
20 he did provide information, including information about
21 Mr. Biggs, that was corroborated by other individuals
22 and used in this case.

23 And the other is, we have a defendant who is in his
24 70s, or we have a defendant who is 19, or we have a
25 defendant who is Type 1 diabetic. We take those

1 considerations and those issues into consideration and
2 think about what that sentence is going to mean to that
3 individual.

4 So she says, Look, five years is a long time for
5 anybody. For somebody in Mr. Williams' condition,
6 there's a multiplier.

7 What do you say about those two issues?

8 MR. DRESCHER: There's no evidence that the
9 Bureau of Prisons is incapable of accommodating somebody
10 with Mr. Williams' physical condition. There's no
11 evidence to suggest that Mr. Williams is going to suffer
12 in prison uniquely because he is in a wheelchair. He
13 suffers generally because he is in a wheelchair, and
14 that's an unfortunate reality.

15 The fact that he is in that -- as your Honor
16 pointed out, that wheelchair's never stopped him from
17 driving or -- did not stop him from driving, did not
18 stop him from getting up here. He would drive with --
19 he is a very resourceful man, and given that he was shot
20 at the age of 18 and he was paralyzed as a result is sad
21 on many, many, many levels, but it didn't stop him from
22 committing the crime, and unless there's some suggestion
23 that the Bureau of Prisons is incapable of dealing with
24 his physical condition, I don't think it should be a
25 sentencing mitigator.

1 With regard to the question of cooperation,
2 Mr. Williams had an opportunity to sign -- to -- we
3 certainly were interested in whether Mr. Williams wanted
4 to sign a cooperation plea agreement. To do that, as
5 your Honor knows, you have to do what Mr. Biggs did, and
6 that's basically the full monty. You have to admit
7 everything you have done, and you have to share
8 information you know. And he was not willing to do
9 that.

10 So, yeah, he gave some post-arrest statements, and
11 the information in the post-arrest statements tended to
12 be accurate, tended to be true, tended to be deemed
13 reliable, and we used that information in getting the --
14 getting the search warrant together to get into the
15 Instagram accounts. Yes. But that happens with lots of
16 people who don't cooperate, and rarely is the fact that
17 somebody gave a post-arrest statement alone a reason to
18 reduce his sentence.

19 THE COURT: Well, he did more than that,
20 though, right?

21 MR. DRESCHER: Well, he --

22 THE COURT: He consented to a search of his
23 cell phone. I found that the stop itself was unlawful
24 and that, thereafter, he gave false information to a
25 police officer. So he did more than your average

1 defendant who gets arrested and makes some post-arrest
2 statement; is that fair to say?

3 MR. DRESCHER: Well, I mean, with regard to
4 the consent of the search of his phones, I mean, the
5 discussion at the time was, Look, if you want to
6 cooperate, you should consent. You don't have to
7 consent, but -- and if you don't consent, we are going
8 to go get a warrant to look at these phones, and we will
9 go do that.

10 And so it was really the sleeves off his vest to
11 consent because he knew we were going to get into the
12 phones at that point, and I think he rationally said,
13 Okay, you don't have to get a search warrant.

14 You know, we appreciate that, but we could have got
15 the search warrant to get into those phones. And at the
16 time he was looking to help himself, this being back in
17 February of 2013, and he got the benefit of that -- of
18 that conversation. He had the charges dismissed against
19 him. Unfortunately, a month or so later he dispatches
20 Jennifer Garay to come back up here with over a thousand
21 bags of heroin, and it was clear he didn't get it. He
22 was not somebody capable of working with law
23 enforcement.

24 THE COURT: All right. Miss Shelkrot, any
25 brief response?

1 MS. SHELKROT: Yes, your Honor.

2 To the Court's last point, indeed, the cooperation
3 that Mr. Williams provided was substantially more than a
4 post-arrest statement. There's a 19-page ROI that
5 details the statements that he made during a proffer
6 session. Mr. Drescher wasn't there, but it was several
7 hours worth of the information that he provided in that
8 setting to the government. And as the Court notes, it
9 was used successfully by the government to obtain
10 evidence against somebody who, incidentally, was higher
11 up on the food chain, unlike the unusual, in my
12 experience, situation where Mr. Biggs has been brought
13 in to cooperate against the people that worked for him,
14 which is a fairly extraordinary thing that the
15 government has done here.

16 Mr. Williams, in contrast, provided useful and
17 usable information that was significant in the
18 prosecution of somebody higher on the food chain and
19 also against Jahkim Brewer, who was, at the very least,
20 co-equal and may have been higher on the food chain as
21 well. I simply don't have those details.

22 The government is asking for a -- an
23 extraordinarily high sentence in this case given what
24 Mr. Williams himself has alleged to have done and given
25 the sentences that have been handed out by this Court in

1 the related cases. The PSR indicates the sentences that
2 have been given to the related cases. The highest of
3 those cases is 48 months to Denzlie Boston. The other
4 sentences range from 24 months -- 24 months, 27 months,
5 35 months, 48 months to Mr. Boston, and then a couple
6 who -- Mr. Knowlton has since been sentenced. He got 12
7 months.

8 It's really quite remarkable that, given that range
9 of sentences for this cast of characters, Mr. Drescher
10 is asking for a nine-year sentence from somebody who has
11 never served more than a couple days in jail. There is
12 no question that a serious and significant sentence is
13 warranted here, but I simply do not know how the Court
14 could, on the information that's present, conclude that
15 five-years' incarceration will be insufficient to get
16 across the message and to serve as a deterrent in this
17 particular case under these circumstances.

18 Mr. Williams is not a major, major player. As I
19 said earlier, he is a mid-level manager and one of many
20 people, unfortunately, who took advantage of the
21 opportunity to come to Vermont and sell heroin through
22 intermediaries. That doesn't mean that he is entitled
23 to a medal for that behavior, and I am certainly not
24 suggesting that, but I am suggesting that he is not so
25 far out of the mainstream that he deserves a sentence

1 twice that of what his other compatriots are getting.

2 THE COURT: All right. The Court's going to
3 begin with the guideline issues, the factual challenges
4 to the guidelines, and the first one is whether Miss
5 Garay and Mr. Knowlton were actually working for the
6 defendant. There's an argument about that. There is no
7 factual proffer that has been made in -- in objection to
8 the presentence report.

9 On March 30th, 2013, Miss Garay was arrested. It's
10 in paragraph 29 and 30 of the presentence report. She
11 explains that she made the trip to Vermont for
12 Christopher Williams, that she knew as Lay; that
13 Mr. Williams had been trying to convince her boyfriend
14 to transport narcotics for him and he was considering
15 doing it. She didn't want her boyfriend to get
16 involved. She made the trip instead. Mr. Williams was
17 going to handle everything. She actually provided a
18 fairly detailed statement for her role in transporting
19 the narcotics, and there isn't any reason to believe
20 that she made it up and attributed it to Mr. Williams
21 for the sake of not having anybody else to do it for.

22 Same thing with Mr. Knowlton. There's a
23 comprehensive statement in the presentence report about
24 his role in the offense. He admitted that in -- or
25 after the fall of 2011, he became -- began obtaining

1 heroin from an individual he knew as Shawn, who was in a
2 wheelchair, later identified as Christopher Williams.
3 He drives between New York City to pick up a person who
4 works for Mr. Knowlton -- for Mr. Williams. After they
5 pick up Mr. Williams' worker, they head back to Vermont.
6 They got into an accident. At that point the worker
7 left the car.

8 Mr. Knowlton, again, his statement is fairly
9 detailed and provides sufficient evidence so that the
10 Court could find by a preponderance of the evidence that
11 he assisted Mr. Williams in the distribution of heroin.

12 With regard to whether or not there is properly a
13 firearm enhancement, we have Miss Heffernan's statement
14 that Williams showed her a gun in his belt on two
15 occasions while he was in Vermont. She described it as
16 a black pistol, possibly a nine millimeter. She added
17 the defendant referred to it as his protection and his
18 body guard.

19 The criminal history for Mr. Williams recites that
20 he is well acquainted with weapons and has been known to
21 use them, including firearms, and there isn't any basis
22 on which to challenge Miss Heffernan's statement in
23 terms of its credibility. So the Court is going to
24 accept those provisions of the presentence report.

25 The defendant makes a further challenge that a

1 four-level role enhancement should be applied, and he
2 argues that the distinction between leadership and
3 organizational roles from mere management or supervision
4 rests on factors, including the exercise of
5 decision-making authority, the nature and participation
6 of the commission of the offense, the recruitment of
7 accomplices, the claimed right to a larger share of the
8 fruits of the crime, the degree of participation and
9 planning or organizing the offense, the nature and scope
10 of the illegal activity, and the degree of control and
11 authority exercised over others.

12 And one of the main arguments is, If I am at a
13 level four, what does that leave for Mr. Biggs? He
14 should be at an even greater level.

15 The sentencing guidelines recognize that more than
16 one people -- more than one person can qualify for this
17 role enhancement. And here, the Court agrees that a
18 three-level enhancement, as opposed to a four-level
19 enhancement, properly reflects the fact that
20 Mr. Williams had a number of individuals running drugs
21 for him; that he coordinated their movements and he
22 oversaw that, but he was nowhere near the scale in this
23 very same conspiracy that Mr. Biggs occupied. So I am
24 going to keep the enhancement but reduce it to a
25 three-level enhancement.

1 The government challenges drug quantity in the
2 presentence report which is based on historical
3 information provided by a number of witnesses that the
4 government put before the grand jury. And it's a
5 conservative estimate, but the government says it's
6 insufficient to fully reflect the defendant's
7 culpability in this matter.

8 I did not find Mr. Biggs to be a particularly
9 credible witness. When he advised that he had never
10 used violence, and then later admitted that he shot a
11 gun in a dispute, that he punched somebody unconscious
12 in another dispute, he admitted having a conviction for
13 robbery and a conviction for attempted robbery, I didn't
14 see how that statement could be credible.

15 There were other statements he made as well that
16 the Court found were less than credible, and he conceded
17 he previously provided false information to a police
18 officer on two occasions by giving them a false name.

19 More importantly, he was very vague about drug
20 quantity and repeatedly said it depended on the
21 business; it depended; sometimes it was seven, eight,
22 15; and conceded that when he was asked, before the
23 grand jury, who were his five top customers, in effect,
24 the defendant was not named. He kept no records of his
25 drug-dealing activity. There is no independent

1 corroboration of the quantity that Mr. Biggs attributes
2 to Mr. Williams, and he admits he had 30 customers in
3 Vermont that he was supplying, all of which he was
4 keeping track of in his head.

5 So I am not going to increase drug quantity based
6 on the testimony of Mr. Biggs. The Court accepts the
7 presentence report as its findings of fact in this
8 matter. The Court begins with a guideline calculation.

9 Pursuant to the decisions in the Supreme Court in
10 United States versus Booker and Gall versus United
11 States, and the Second Circuit Court of Appeals decision
12 in United States versus Crosby, in determining the
13 following sentence, the Court has considered the United
14 States Sentencing Guidelines applicable in this case,
15 including all departure authority contained in the
16 guideline policy statements as well as all the factors
17 enumerated in 18 USC, section 3553(a).

18 The Court finds as follows in this case:

19 The offense of conspiracy to distribute a hundred
20 grams or more of heroin, in violation of 21 USC, section
21 846, 841(a), (b) and (1)(B) occurred from in or about
22 April 2012 to in or about April of 2013, hence the
23 sentencing guidelines apply in this case.

24 The guideline for this offense is found in section
25 2D1.1 of the Guidelines Manual, November 1st, 2013

1 edition.

2 The offense involved at least 400 grams but less
3 than 700 grams of heroin, which results in a base
4 offense level of 28.

5 Specific offense characteristics apply in this
6 case.

7 The defendant possessed a firearm during the
8 instant offense resulting in a two-level increase,
9 pursuant to section 2D1.1(b)(1).

10 The defendant was an organizer or leader of this
11 criminal activity which involved five or more
12 participants, resulting in a three-level increase,
13 pursuant to section 3B1.1(a). The adjusted offense
14 level is 33.

15 The defendant has demonstrated an acceptance of
16 responsibility for his offense, therefore his offense
17 level is reduced by three levels, pursuant to U.S.
18 sentencing guideline section 3E1.1. The total offense
19 level is 30.

20 The defendant has five criminal history points
21 resulting in a criminal history category of three. The
22 guideline range of imprisonment for an offense level of
23 30 in a criminal history category of three is 121 to 151
24 months. The guideline term of supervised release is
25 four years to life. Since the offense of conviction

1 expressly prohibits probation, imposition of a term of
2 probation is not authorized.

3 The Court anticipates the proposed amendment to the
4 drug quantity table will become effective on November
5 1st, 2014; as a result, the Court will vary downward two
6 levels, under 18 USC, section 3553(a), to account for
7 this change independent of any other aggravating or
8 mitigating factors that may warrant a variance or
9 departure from the otherwise applicable guidelines.

10 With a criminal history of three and offense level
11 of 28, this results in a sentencing guideline range 97
12 to 121 months.

13 In addition to the sentencing guidelines, the Court
14 looks at the factors under 18 USC, section 3553(a) in an
15 effort to impose a sufficient, but not greater than
16 necessary, sentence. In deciding what is a sufficient,
17 but not greater than necessary, sentence, the Court
18 examined the nature and circumstances of the offense,
19 the history and characteristics of the defendant, the
20 need for the sentence imposed, the kind of sentences
21 available, the need to provide unwarranted sentencing
22 disparities between defendants with similar criminal
23 histories who committed similar crimes. So you should
24 not get a sentence that is substantially more harsh or
25 more lenient than somebody who is also in this criminal

1 history category who also committed this crime unless
2 there's a reason for it. The Court also needs to
3 provide restitution to any victim.

4 In deciding the need for the sentence imposed, the
5 Court is directed to reflect the seriousness of the
6 offense, impose just punishment, protect the public from
7 future crimes by you, impose what we call specific
8 deterrence -- say don't do this again. It has
9 consequences. They're very serious ones -- and
10 hopefully you will not be back here. And also say to
11 the community we are not going to tolerate this. If you
12 are going to come up to Vermont and sell heroin, you are
13 going to expect to spend a fair amount of time in jail,
14 and hopefully people will be deterred from that
15 activity.

16 The Court also needs to make sure that you get
17 substance abuse treatment, medical treatment, vocational
18 opportunities in the most effective manner possible.

19 In this case, it's hard to understate the damage
20 you did in Vermont, and you have been around enough
21 addicts to know what their lives are like and who they
22 become when they are chasing, in particular, this drug.
23 And a lot of them will tell me, "I lost my soul. I
24 didn't care about my kids. I didn't care about my
25 husband. I didn't care about my job. I was willing to

1 rip off my grandmother. I'd do whatever I needed to do
2 to get another drug."

3 And it's the kind of drug that they may be addicted
4 to for the rest of their life, and you know that. And
5 you were a big distributor. You are not similarly
6 situated to some of the people who got smaller sentences
7 in this case. They worked for you. And you were fairly
8 manipulative and predatory, meaning you used people to
9 accomplish your ends. You used them and you preyed upon
10 their addiction, and you knew that they would do just
11 about anything to get the next bag of heroin, next hit,
12 and you used that to get them to run drugs, and a lot of
13 drugs.

14 This is -- any -- any description of the drug
15 quantity in this case is conservative because that's
16 probably a small amount of what we know about, and even
17 if we take the most conservative amount, it's still a
18 huge amount of heroin coming into the District of
19 Vermont, and you made it happen.

20 And you were pretty talented in arranging things.
21 You were pretty organized, and you had a lot of people
22 working for you, and that has to be reflected in the
23 sentence, the damage you did, the role you played, and
24 what it did to the community, and what do we say to the
25 community about somebody who inflicted that level of

1 damage.

2 Your history and characteristics. You're a mystery
3 to me because I think it's really awful that you had --
4 you got caught in the crossfire of shootings twice, and,
5 you know, you have all those consequences, and that
6 wasn't something that you were doing at the time. It
7 was an environment that you lived in, and here you are
8 with all of that to deal with. And I am sure it was
9 hard to get jobs and to establish a normal life and not
10 seek the protection of a gang or other people in the
11 situation you were in.

12 You have done well on pretrial release, so I see
13 that potential to turn it around, and it's just a shame
14 that you didn't do it before because you took a terrible
15 situation, something that happened to you that should
16 never happen, and it really didn't stop you at all from
17 shooting at somebody, threatening somebody with a knife,
18 bringing drugs up here, having a firearm, and it's just
19 a mystery as to why not, why -- why you would put that
20 level of risk on you, knowing that if you go to jail,
21 you are going to be going in the wheelchair, and you are
22 going to get better assistance they can provide, but
23 it's going to be a pretty miserable time.

24 And when you and I were at the change of plea and I
25 found out that they had one nurse on duty in Northwest

1 and I thought about you being there for a couple weeks,
2 I thought that that's just going to be a miserable
3 situation for everybody. You knew that better than I,
4 and you are still running drugs after you get arrested.

5 So I agree that I need to factor in what this
6 sentence is going to be like for you as opposed to
7 somebody without these special challenges, but I wish
8 you had factored that in before you started sending
9 people up here and coming up here with drugs.

10 I think that some consideration should be made for
11 the fact that you provided not only usable information
12 to the government but used information. You did
13 cooperate to some extent. The information you provided
14 was truthful, it was corroborated, and they used it, and
15 that is not typical. That does not happen in every
16 case. And you shouldn't be penalized because you didn't
17 go the further step. If you went the further step, they
18 would be asking for a lower sentence.

19 So you are here, but I think that the Court should
20 take into consideration that you did provide usable and
21 used information that was used to secure a conviction
22 against Mr. Biggs who just testified.

23 It's hard to come up with a sentence that's
24 appropriate in this case that balances all of those
25 factors, and it's not that I think that the government's

1 sentencing request is off the charts, but I don't think
2 it fairly reflects both the effort you did do to
3 cooperate and your special circumstances, and so with
4 all of that in mind, I have determined that I am going
5 to increase the time spent in supervised release because
6 I think that we need to protect the public from future
7 crimes by you. I think this has to be your last crime.
8 And I am going to reduce the sentence, to some extent,
9 to reflect your special circumstances.

10 And I have determined that a sentence of 72 months,
11 followed by a seven-year term of supervised release, is
12 a sufficient, but not greater than necessary, sentence.

13 It is the sentence of the Court the defendant be
14 committed to the custody of the Federal Bureau of
15 Prisons for a term of 72 months, concurrent to any
16 undischarged term of imprisonment, to be followed by a
17 seven-year term of supervised release.

18 The conditions of supervised release are as
19 follows:

20 The defendant shall not commit any crimes, federal,
21 state or local.

22 The defendant shall not possess any illegal
23 controlled substances.

24 The defendant shall abide by the standard
25 conditions of supervision recommended by the Sentencing

1 Commission.

2 The defendant shall refrain from any unlawful use
3 of a controlled substance and submit to a drug test
4 within 15 days of release on supervised release and at
5 least two periodic drug tests thereafter for use of a
6 controlled substance.

7 The defendant shall not possess a firearm or other
8 dangerous weapon.

9 The defendant shall submit his person, property,
10 house, residence, vehicles, papers, computers -- as
11 defined in 18 USC, section 1030(e)(1) -- other
12 electronic communications or data storage devices or
13 media, or office, to a search conducted by a United
14 States probation officer. Failure to submit to a search
15 may be grounds for revocation of release. The defendant
16 shall warn any other occupants that the premises may be
17 subject to searches pursuant to this condition. An
18 officer may conduct a search pursuant to this condition
19 only when reasonable suspicion exists that the
20 defendant has violated a condition of supervision and
21 that the areas to be searched contain evidence of this
22 violation. Any search must be conducted at a reasonable
23 time and in a reasonable manner.

24 The defendant shall cooperate in the collection of
25 DNA as directed by the probation officer.

1 The guideline fine range is from 15,000 to \$5
2 million. The defendant has demonstrated an inability to
3 pay a fine, hence all fines are waived.

4 Special assessment of a hundred dollars is imposed,
5 due immediately.

6 Both the defendant and the government may have the
7 right to appeal this sentence as set forth in Title 18
8 U.S. Code, section 3742. If the defendant is unable to
9 pay the costs of an appeal, he has the right to apply
10 for leave to appeal *in forma pauperis* -- in which event
11 the court would waive the costs of an appeal -- and may
12 request the court to appoint counsel for him. If the
13 defendant so requests, the clerk of the court shall
14 prepare and file forthwith a notice of appeal on behalf
15 of the defendant. Notice of appeal by the defendant
16 must be filed within 14 days of the date judgment is
17 entered on the docket, pursuant to Rule 4(b) of the
18 Federal Rules of Appellate Procedure.

19 I would say that I would note with regard to the
20 defendant's objections to the presentence report, that
21 even if I found that the government had an obligation to
22 prove those up, which I do, the Court is entitled to
23 rely on the detailed recitations in the presentence
24 report, which are not challenged in terms of
25 credibility, to support its findings in this matter.

1 Miss Shelkrot, do you have any recommendations as
2 to where Mr. Williams serves his sentence?

3 MS. SHELKROT: Yes, your Honor. I'd like to
4 ask that he serve it at Fort Devens.

5 THE COURT: All right. Any objection to that?

6 MR. DRESCHER: No.

7 THE COURT: The Court recommends that the
8 defendant be incarcerated at Fort Devens.

9 Anything that you need to dismiss, Mr. Drescher?

10 MR. DRESCHER: Yes. I ask that the
11 distribution count be dismissed.

12 THE COURT: Right. And I assume there's no
13 objection?

14 MS. SHELKROT: No objection.

15 THE COURT: It's dismissed.

16 Anything further in this matter?

17 MR. DRESCHER: Not from the government.

18 MS. SHELKROT: No, thank you, your Honor.

19 THE COURT: Mr. Williams, I wish you good
20 luck. Don't come back because you can't afford to do
21 this amount of time -- this is going to be hard, and I
22 know it -- and have your vision of how things are going
23 to turn out when you get released, and pursue it, and
24 you will do this time, you will rejoin the community,
25 and you will have an opportunity to show us that you

1 mean it when you say you are sorry and this is the end
2 of your criminal activity.

3 THE DEFENDANT: Thank you.

4 (Court was in recess at 5:10 p.m.)

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C E R T I F I C A T I O N

10 I certify that the foregoing is a correct
11 transcript from the record of proceedings in the
above-entitled matte

12



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November 13, 2014
Date

Anne Nichols Pierce

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